THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

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Case No. 2013-001071

Michael McCain,
Employee/Claimant
Appellant,

vs.

Tobie Parker d/b/a West Manning Auto and William Shepherd,
Employer(s),

&

South Carolina Uninsured Employers' Fund
Carrier,
Respondents

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# INITIAL BRIEF OF APPELLANT

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SC Court of Appeals

J. Joseph Condon, Jr.
3842-C Leeds Avenue
N. Charleston, SC 29405
(843) 554-1000
Attorney for Appellant

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## STATEMENT OF ISSUES

1. That the South Carolina Workers' Compensation Panel should have reviewed the Single Commissioner's Order.

## STATEMENT OF THE CASE

This Workers' Compensation matter arises out of the claim for benefits filed by the Employee/Appellant, Michael McCain (Appellant). In his Form 50, the Appellant alleged he suffered injuries arising out of and in the course of his employment with West Manning Auto on April 30, 2009.

The South Carolina Workers' Compensation Uninsured Employers' Fund (Fund) denied the case.

All pleadings and notices purportedly sent to both Shepherd and Parker were mailed to 1431 Georgia Pacific Highway, Alcolu, SC 29001. Both Shepherd and Parker failed to appear at the Single Commissioner's hearing. Order of November 27, 2012, p.2.

This matter was heard before Commissioner Andrea C. Roche on August 13, 2012. Commissioner Roche entered her decision and Order on November 27, 2012.

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. Transcript, p. 5. During the pre-hearing conference, only Mr. Shepherd indicated that he did not receive at his home address a written notice of the hearing before the Single

Commission. Mr. Shepherd indicated that his home 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 at the time of the Panel's review. Neither Mr. Parker or Mr. Shepherd appeared at the hearing before the Single Commissioner. Order of November 27, 2012, p. 2. 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.

## ARGUMENTS

That the Full Commission should have reviewed the Order of the Single Commissioner.

At the Full Commission review, only William Shepherd, in unsworn testimony, stated he did not receive the notice of the Single Commissioner hearing at his home address. There was no evidence submitted that Mr. Shepherd did not receive the notice. Also, at the Full Commission review, Mr. Shepherd was not a party to the Order and therefore there was no prejudice to Mr. Shepherd nor did any due process violation occur.

There was no showing of good cause nor was there an evidentiary hearing to show whether proper service was obtained. S.C. Code § 42-17-50 (Cum. Supp. 2012) requires a showing of good grounds to review further evidence. What occurred was unsworn testimony from an alleged party claiming he was not properly served. Mail was sent to where the party worked. Also, at the time of this hearing, the individual was no longer a party. Order of November 27, 2012, p. 2. Where is the prejudice to that

alleged party?

The Workers' Compensation Commission Panel did not follow the proper statutory provisions provided for taking evidence or even addressing the issue with regard to service. The Panel assumed service was ineffective or that there was prejudice in this matter without even taking sworn testimony. If a party wants to introduce new evidence into the record, then the party shall file a motion and affidavit with

the Commission's Judicial Department (S.C. Reg. 67-707(B)). No such motion or affidavit was ever made or filed.

Mr. William Shepherd works 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 received notice of the hearing.

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

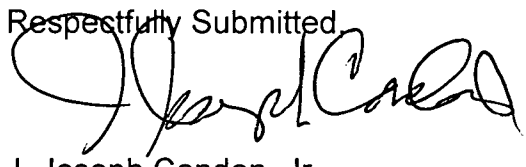
was no evidence of any returned mail for Mr. Shepherd nor was there any evidence that the address used for Mr. Shepherd was not proper. The new address may be his home address but the address used by the Commission for the hearing was an address where he was actually receiving mail.

That the South Carolina Workers' Compensation Commission failed to properly determine whether William Shepherd received notice of the hearing before the Single Commissioner and whether there was any prejudice to Mr. Shepherd.

## CONCLUSION

Therefore, it is respectfully requested that this case be remanded for a proper review of the single Commissioner's Order or an evidentiary hearing with regard to the issue of service or prejudice to a non-party.

Respectfully Submitted,



J. Joseph Condon, Jr.
3842-C Leeds Avenue
N. Charleston, SC 29405
Tel: (843) 554-1000
Fax: (843) 554-5152
S.C. Bar #11814
Attorney for Appellant Michael McCain

Charleston, SC
September 16, 2013