

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Full Commission

Case No. 0906486

Shawn E. Pauling,Appellant,

v.

PeopLease Corporation,Employer,

and

Arch Insurance Company c/o
Gallagher Bassett Services, Inc., Respondents.

RETURN TO APPELLANT'S MOTION TO REINSTATE APPEAL

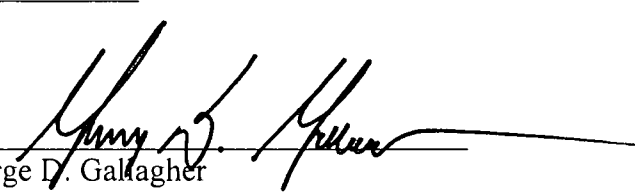

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TABLE OF AUTHORITIES

CASES

Wise v. S.C. Dept. of Corrections, 372 S.C. 173, 642 S.E. 2d 551 (Sup. Ct. 2007)3-4

STATEMENT OF ISSUES

Respondents in the above-referenced workers' compensation matter respectfully request that this Court **DENY** Claimant's Motion dated October 5, 2013 to reinstate his Appeal. Pursuant to Rule 224(e) of the SCACR, Respondents opposition to the Motion are based on the following grounds:

1. By Order date July 23, 2013 this Court dismissed Appellant's appeal for failure to timely serve the Record on Appeal as required by Rule 210 SCACR. Specifically, Appellant failed to file a final brief and Record on Appeal in accordance with Rules 210 and 211 SCACR, respectively, after his appeal was previously reinstated on or about April 8, 2013 following a dismissal in January 2013. Notice of the Order of Dismissal was served on Appellant's attorney, Gene Stockholm, on or about July 23, 2013.
2. Thereafter, the Remittitur on this case was submitted to the South Carolina Workers' Compensation Commission via notice dated August 13, 2013 in accordance with Rule 231(a) SCACR, which states, in pertinent part, "[t]he clerk shall remit the case to the lower court or administrative tribunal in accordance with Rule 221 unless a motion to reinstate the appeal has been actually received by the court within fifteen (15) days of filing the Order of Dismissal." Notice of the Remittitur was mailed to the Appellant's attorney, Gene Stockholm.
3. Based upon information and belief, Appellant failed to file a Motion to Reinstate the Appeal after the Order of Dismissal dated July 23, 2013 and prior to the Remittitur dated August 13, 2013.
4. Respondents respectfully submit that the Court has no jurisdiction to entertain Appellant's Motion. See Wise v. S.C. Dept. of Corrections, 372 S.C. 173, 642 S.E. 2d

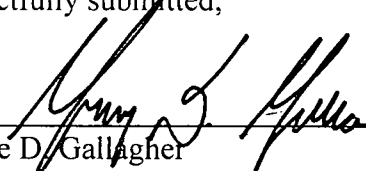
551 (Sup. Ct. 2007) (“[w]hen the remittitur has been properly sent, the appellate court no longer has jurisdiction over the matter and no motion can be heard thereafter”). The only exception to this rule is when the remittitur is sent down my mistake, error, or inadvertence of the court. *Id.*

5. Appellant has submitted no argument or evidence that the Remittitur in this case was sent down by mistake, error, or inadvertence of the Court. Rather, the Court’s filings establish that the Remittitur was correctly issued after more than 15 days had elapsed from the date of the dismissal in accordance with Rule 221(a). As noted earlier, Claimant does not submit that he properly filed a petition for reinstatement during the interim between the dismissal and the Remittitur in accordance with the Appellate Court Rules.
6. On the merits, Appellant submits that his appeal should be reinstated purportedly because he received no “contact from the Court on this matter” following previous reinstatement of his appeal. Respondents submit that Appellant’s reasoning does not constitute excusable neglect for failure to file the Record on Appeal as required by Appellate Court Rules.
7. Respondents specifically note that the Court does not provide notice to the parties on when required filings are due. The timing of required filings and submissions is governed by the Appellate Court Rules themselves, and are not contingent upon prior notice from the Clerk or the Court. The Rules make it clear that it is incumbent upon the parties to know and understand the Appellate Court Rules requirements for the timing of the filings/submissions.

CONCLUSION

WHEREFORE Respondents, for all the aforementioned reasons, respectfully submit that this Court has no jurisdiction to entertain Claimant's Motion to Reinstate his appeal after the case as already been remitted to the lower court. In the alternative, Respondents submit that Appellant's purported reasoning for his failure to make required filings does not constitute good cause to reinstate his appeal. As such, Appellant's Motion must be **DENIED**.

Respectfully submitted,



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October 11, 2013

Attorneys for Respondents

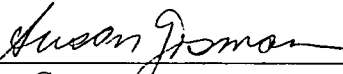
CERTIFICATE OF SERVICE

I, the undersigned, Legal Assistant of law offices of McAngus Goudelock & Courie, L.L.P., attorneys for defendants, do hereby certify that I have served counsel of record with the foregoing document(s) by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleading(s): **RETURN TO CLAIMANT'S MOTION TO REINSTATE APPEAL**

Counsel Served: Gene Stockholm, Esquire
Oswald Law Firm
Post Office Box 4052
West Columbia, South Carolina 29171-4052

Date Served: October 11, 2013



Susan Gosman
Legal Assistant to George D. Gallagher