McDANIEL LAW FIRM
ATTORNEYS AND COUNSELORS AT LAW
1315 ELMWOOD AVENUE
COLUMBIA, SOUTH CAROLINA 29201

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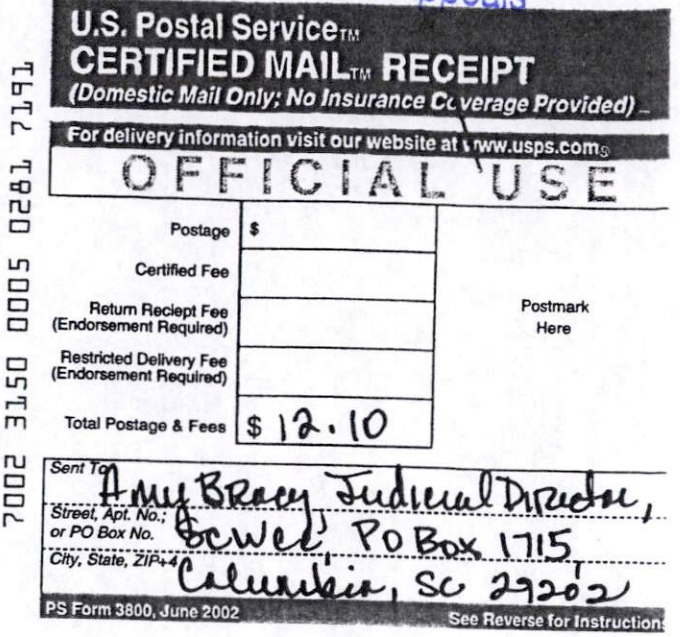
Preston F. McDaniel

Daniel E. Peagler

July 31, 2024



VIA CERRIFIED MAIL - 70023150000502817191
RETURN RECEIPT REQUESTED
Amy Bracy, Judicial Director
SC Workers' Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202

RE: Mary Davis v. Ruiz Food Products
WCC File No.: 1923627 & 2223041

Dear Ms. Bracy:

Please find enclosed for filing with the Commission our **MOTION FOR RECONSIDERATION PURSUANT TO R. 67-215(B)** in the above-referenced matter, along with the required $50.00 filing fee. I am, by copy of this letter, serving opposing counsel with a copy of same.

I hope this is sufficient for filing with the Commission, however, if additional information or further clarification is needed, please feel free to contact me at your convenience.

Sincerely yours,

Preston F. McDaniel

PFM/kth
Enclosures

cc: Gerald Malloy, Esquire
Walter H. Barefoot, Esquire

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
WCC File No. 1923267 & 2223041

MARY L. DAVIS,

Employee-Claimant,

v.

RUIZ FOODS,

as Employer, and

SAFETY NATIONAL CASUALTY CORPORATION C/O SEDGWICK (YORK RISK SERVICES GROUP INC.,

as Carrier,

Defendants.

MOTION FOR RECONSIDERATION PURSUANT TO R. 67-215(B)

TO: SC WORKERS' COMPENSATION COMMISSION, COMMISSIONER AISHA TAYLOR AND WALTER H. BAREFOOT, ESQUIRE, ATTORNEY FOR THE DEFENDANTS:

Please be advised that pursuant to SCWCC R. 67-215 (B), the Claimant hereby moves for Reconsideration and a vacation of the Order issued on July 29, 2024, based on the following:

1. That following the issuance of Notes for Decision back in January of 2024 as reflected in the Commission file, Counsel for the Defendants notified you that a decision had not been made on several essential issues for decision before you.

2. That as late as July 1st, Counsel for the Defendants again inquired as to the status of his request for you to make a

ruling and Findings of Fact on essential issues it is agreed by both parties upon which you had not made a decision in the initial Notes for Decision.

3. That on July 19, 2024, Counsel for the Claimant advised the Commission Executive Director Gary Cannon that Counsel had filed a Summons and Complaint/Petition for Writ of Prohibition and Writ of Mandamus with the Circuit Court in Florence County concerning this matter and asked as is reflected in the Commission's file that Mr. Cannon on behalf of the Commission(er) advise whether or not the Commission(er) would accept service.

4. That on July 25, 2024 Mr. Cannon advised specifically that the Commission(er) would not accept service for the Commission or on Commissioner Taylor in her official capacity as a Commissioner of the Commission. A copy of that email was also forwarded to Keith Roberts, Esquire as General Counsel for the Commission.

5. That on July 25, 2024, "a courtesy copy" of the cover letter and the Summons and Complaint and Motion for a Temporary Restraining Order and a proposed Order for a Temporary Restraining Order Issued Without Notice was forwarded to Gary Cannon, as Executive Director and was copied to Keith Roberts as General Counsel.

6. That as set forth in the Commission's file and as herein above, Defense Counsel had been asked to draft the Order on behalf

of the Commission. Counsel for the Claimant has not been served with nor provided with any proposed Order from Counsel for the Defendants pursuant to the original Notes for Decision nor any further direction from the Commission in that regard.

7. That without notice of a submission of a proposed Order, Claimant's Counsel received the Order which is the subject of this Motion for Reconsideration by email on July 29, 2024 at 12:49 pm, which contains numerous Findings of Fact and specifically includes Findings of Fact concerning the two issues upon which the Commission had not made any prior Findings nor any notification to Defense Counsel with what Findings were to be included in the proposed Order, nor is there any evidence in the Record that the proposed Order was submitted by Defense Counsel.

8. That most respectfully this Order was issued only after courtesy notification to the Commission that the Claimant was seeking, and the Commission and Commissioner Taylor, in your official capacity, would be served with the Complaint, both a Temporary Restraining Order and a Temporary Restraining Order Issued Without Notice until a decision could be made on the Writs of Prohibition and Mandamus.

BASED ON A REVIEW OF THE ORDER

9. That while your Notes for Decision do not make reference to any specific evidence, the Finding of Fact addressed to those Notes do reference evidence. That addition where applicable will

be referenced. Next, there is absolutely no reference to Commissioner Wilkerson's Order and that the purpose of filing a separate Form 50 was so that a Commissioner could determine whether or not the problems with the Claimant's neck stemmed from the accident alone, or in combination with the second incident that occurred in November or resulted from the November incident alone. Commissioner, that Order was not appealed and that Order finds that the Claimant had problems with her neck but only as to whether from which injury it occurred or a combination of both.

10. That further, looking over the Order, in large part your Findings of Fact are based on your Order of June 7, 2021. That Order was issued on the basis of our Form 50 "**seeking additional medical treatment in the form of an evaluation and medical treatment for her left hip and left knee**". At that point, the Defendants had admitted as you set forth in the Statement of the Case "this is an admitted claim as to the Claimant's back only". The only Finding in reference to the back beyond that is that the injuries to the low back was admitted under Finding of Fact #1 of that Order. In your Order Section of the **June 7, 2021 Order** you only specifically address "Claimant is entitled to an evaluation for her left knee and left hip with Dr. Rodney K. Alan at McLeod Orthopaedics in Florence, SC". Thus, your Finding of Fact #1 **in the July 29th Order** is wrong and you never made that kind of a

Finding in that Order. That Order was sought and addressed only treatment for the left hip and left knee.

11. That in your Finding of Fact #2 (evidence added) you constantly reference that the Claimant is receiving authorized causally related medical treatment at the direction of the Defendants. That is wrong. The Defendants have not authorized nor are they paying for the treatment for the left knee and left hip which was initially before you at the hearing. You may recall that Mr. Barefoot, and I would ask him to correct me if I am wrong, was taking the position on behalf of his clients that because Dr. Alan had set out the need for that treatment in the same note that she had reached maximum medical improvement and since no decision had been made on permanency for either the hip or the knee, that they were not providing for the medical care. Here again that Finding is wrong.

12. That in reference to your Finding of Fact #4 (citations added) it fails to note that all of those disciplinary actions with the exception of the first disciplinary action occurred while the Claimant was on light duty.

13. That in Finding of Fact #3 (citations added) you refer to Dr. Alan's light duty restrictions but you fail to note the ever increasing light duty restrictions and the changes in jobs to which she was assigned that the employer made available to try to continue to accommodate the Claimant's ever increasing

restrictions. You fail to note that at the time of the termination she was under restrictions by Dr. Chokshi of "**sedentary work only**".

14. That under Finding of Fact #5 (citations added), while you recite the Defendants position you fail to note that her job, again her job, was to throw away product. You also failed to note under Finding of Fact #6 and under #5 in your Notes that not only was that her job but her testimony was agreed to by the defense witness and that to his knowledge no one had ever been fired for that reason before.

15. Under Finding of Fact #8 (#2 in Notes, citation added) you reiterate and base that Finding on your June 7, 2021 Order which again does not address those issues, nor the medical care that the Defendants are "supposedly" continuing to provide (which included treatment for the back) but there has been no treatment since Dr. Alan placed the Claimant under those permanent work restrictions per the Defendants' position on the Record.

16. That Findings of Fact #9, #10, #11, #12, #13, #14, #15, #16, #17, #18, #19 and #20 are not addressed **or made** in your **original** Notes for Decision nor have the parties received any further Notes for Decision from you on these issues since that time.

In specific reference to Finding of Fact #10, it is admitted that an incident occurred and the only question is the severity of

the incident and whether or not the Claimant's injuries resulted from that or in combination with the prior injury or from the prior injury alone. See Wilkerson's Order.

In reference to #11, you failed to note that following the visit with Dr. Chokshi that the Claimant advised her employer, which was admitted during deposition and in the emails, as to her request for authorization for the MRI **per Dr. Chokshi's request**.

17. Commissioner, most respectfully, under Finding of Fact #13, I do not find that we ever made a request specifically for treatment of the wrist.

18. Commissioner, in reference to your Findings of Facts #16 and #17, in her deposition Ms. Opal Jones referred to a Statement she was given by Ms. Octavia Harrison. One of her answers is found at p. 16, ll. 12-14 was that "she said she was -- because they always joke around, Ms. Davis and Mr. Eugene, they always played around, you know, hugging each other --". Then at p. 17, ll. 1-5 in reference to the incident that was reported by Ms. Davis which your Notes tend to indicate did not occur, the witness, Ms. Octavia Harrison according to Ms. Opal Jones stated:

"A. She did not think it was serious until she was approached by Ms. _____ to make a statement and per the statement that I wanted to see her about a statement to write a statement as to what happened that day.

Q: And I believe that as reflected in her statement is that she -- no question that Mr. Davis hit her, and knocked into -- or, you know, I don't want to say

A: bumped into her."

So Commissioner, according to an independent witness some type of event, thought to be jokingly or not, occurred and that Ms. Harrison was at least bumped in the process. You do recall the Fact that the videos were not shown to you and the retention time on certain videos.

19. Commissioner, in reference to Finding of Fact #19, you do remember that the Defendants authorized medical care for the neck at McLeod Occupational Health and that it was Dr. Sandifer's uncontested opinion that to a reasonable degree of medical certainty, the problems with which she was diagnosed and treated there and from which she was suffering included not only her low back but **specifically** her neck, were causally related to and stemmed from the November 16, 2019 accident. You make no Findings of Fact concerning the 2019 accident and the authorized medical care and diagnosis for cervical problems arising out of that accident.

20. Commissioner, you will recall Ms. Davis' testimony that she was instructed to throw away product that was cold and that at times there were tables full of product that had to be thrown away and you will recall that there was absolutely no contradictory testimony or evidence to that fact. Also, Mr. Holder and Ms. Opal Jones in her deposition from which you quote, both stated they did not know the policy concerning throwing away cold product. Also,

in your Finding of Fact #10 you make the statement that she could not recall the name of one person who may have witnessed the alleged incident. The only assumption I can make concerning that Finding (is) that it is made based on is her testimony on the day of the hearing **approximately one (1) year after the incident occurred** that she could not remember the name **because she certainly remembered the name of the lady that Ms. Opal Jones took the statement from, Ms. Octavia Harrison, right after the incident**!.

You also belittle her testimony about throwing away product but again it is uncontradicted that neither Mr. Holder nor Ms. Opal Jones knew the policy and also that **Mr. Holder confirmed that the Plant throws 3-4 tractor trailer truckloads of product away each week**. You do recall her testimony about what she did on the dock checking thrown away product doing one of her light duty jobs before she was given further restrictions beyond those which were given to her by Dr. Alan, which you refer to in your Notes. She was doing that job before she was given and you do not refer to the sedentary work only restriction given to her by Dr. Chokshi.

21. That Conclusion of Law #3 is not a Conclusion of Law in reference to the injuries the Claimant sustained as a result of her accidents but is a Finding of Fact concerning November 16, 2019 admitted accident and is contrary to both the Commission

Record and evidence. The same applies to Conclusion of Law #4 in that you make a Conclusion of Law as to the medical she is entitled to without any Findings of Fact in reference to or supporting that and also you make no statement or finding as to why the neck is not involved since the Defendants paid for authorized medical care and the undisputed medical opinion evidence from Dr. Sandler was that in his opinion to a reasonable degree of medical certainty the authorized treatment he provided for the neck and her neck injury were causally related to the November 16, 2019 injury.

22. That Conclusion of Law #6 is not a Conclusion of Law but is an unsupported Finding of Fact as you do not make any Findings of Fact nor do you address her existing injury in any of your Findings of Fact.

23. That Conclusion of Law #9 is contrary to the decisions of the SC Supreme Court and Court of Appeals and imposes fault into the workers' compensation system.

24. That Conclusion of Law #10 is in accordance with law that the Department of Employment & Workforce decision does not have a "preclusive" effect, meaning res judicata or collateral estoppel, but you make no Finding of Fact nor Conclusion of Law as to why that the uncontested testimony and evidence was not given weight.

25. That in your Order without any supporting Findings of Fact or Conclusions of Law you entitle the Claimant to continued "authorized causally related medical treatment for injuries that she sustained to her left knee, left hip and low back" but you make no Finding as to what continuing medical care is being provided to any of those body parts or any of the other injuries that stemmed from the original November 16, 2019 injury which again according to the uncontested medical evidence from Dr. Sandler, the authorized treating physician and as the McLeod records confirm she was treated for her problems with her; and again Dr. Sandifer stated the opinion to a reasonable degree of medical certainty that those problems stemmed from the work-related accident of November 16, 2019. It is ironic that the Unemployment Commission based on her uncontested testimony that she was following her work instructions and gave that testimony greater weight om awarding her benefits **because there was no contradictory evidence** from the Defendants that she was not following company policy. Whereas as in this case, you will recall that both Mr. Holder and Ms. Opal Jones in her deposition could not testify as to what the policy was on the floor for throwing away cold product, and confirmed it was her job to throw away product that was unusable; thus no contradictory evidence but here benefits are denied.

For the foregoing reasons, reconsideration is respectfully requested, or at least that the Order be withdrawn pending a decision by the Circuit Court.

WE SO MOVE.

Respectfully submitted,

Preston F. McDaniel
McDANIEL LAW FIRM
1315 Elmwood Avenue
Columbia, SC 29201
(803)771-7211

and

Gerald Malloy, Esquire
MALLOY LAW FIRM
108 Cargill Way
Hartsville, SC 29551
(843)339-3000

Attorneys for the Claimant

July 31, 2024

CERTIFICATE OF SERVICE

RECEIVED
JUN 25 2025
SC Court of Appeals

WCC File No.: 1923627 & 2223041

I hereby certify that I have on this day, July 31, 2024, served the following in the matter of **MARY L. DAVIS v. RUIZ FOOD PRODUCTS, INC.** with a copy of the **MOTION FOR RECONSIDERATION PURSUANT TO R. 67-215(B)** by depositing the same in the United States Mail, with adequate postage thereon, addressed as follows:

Walter H. Barefoot, Esquire
McAngus Goudelock & Courie
Post Office Box 12519
Columbia, South Carolina 29211

Kimberley T. Hinkle

Kimberley T. Hinkle, Paralegal

SWORN TO BEFORE ME this
31st day of July, 2024.

(L.S.)
Notary Public for South Carolina
My Commission Expires: 10/25/28