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Jul 30 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Appellate Case No. 2025-001114

Benjamin Moses,Claimant, Appellant,

v.

Evans Delivery Co., Inc., et. al., Employer, Triumphe Casualty Co., Carrier, PeopLease, LLC, and National Interstate Insurance Company, Defendants,

Of which Evans Delivery Company, Inc., and Triumphe Casualty Co. are the Respondents

MOTION TO DISMISS APPEAL WITH SUPPORTING MEMORANDUM

Pursuant to Rule 240, SCACR, Respondents/Defendants hereby move this Court to dismiss the pending appeal filed by Mr. Benjamin Moses, *pro se* Claimant/Appellant. The basis for the motion is as follows:

1. This is an appeal of a Decision and Order of the Workers' Compensation Commission ("Commission") dated May 2, 2025.
2. The Decision and Order affirmed a single commissioner's finding that Mr. Appellant was not an employee in an employment relationship with Defendants, which deprives the Commission of jurisdiction over the claim for benefits. *See Alewine v. Tobin Quarries, Inc.*, 206 S.C. 103, 109, 33 S.E.2d 81, 83 (1945) ("No award under the [Workers' Compensation] Act is authorized unless the employer-employee relationship existed at the time of the alleged injury for which claim is made.").

3. The only issues before the Commission were those set forth in the Form 30 (Request for Commission Review) filed by Appellant. *See Hilton v. Flakeboard Am. Ltd.*, 418 S.C. 245, 249, 791 S.E.2d 719, 721 (2016) (“Only issues raised to the Commission within the application for review of the single commissioner’s order are preserved for review.”).
4. There does not appear to be any rulings in the order pertaining to the issues raised in the Form 30. The applicable Form 30 reads verbatim as follows:

I’m Appealing the order that Prepared By Commissioner Campbell base on 28 U.S. Code § 144 Bias and Prejudice Because the Order I Received on Sept. 5, 2024 By Email And Received My Mail On Sept. 12, 2024 is Repeat of The First Order That Was Vacated Without My Knowledge Or Notification No Information Or Testimony That I give On July 30, 24 Was Mention in His Order Same As The First Order, Which My Opinion That Both Order Was Prepared By the Attorneys, Which Was Untrue, Which Document I Submitted At The Hearing Wasn’t Pointed Out in The Hearing in Which I will forward As Evidence To Corroborate my Claim.

Why I’m I Stating 28 U.S. Code § 144 Bias And Prejudice Concerning The Order Because Commissioner Campbell Was One Of The Commissioner Who Voted To Vacate The First Order Without Considering My Present At This Hearing And Knowingly He Violated My Rights Rule 1.6 RPC Rule 407 SCACR. On Page 2 of The Order, Which divulge information Concerning A former law firm I Hire to Represent Me This Matter Which Was Untrue, And My Permission Was Not Given To Do So, which Only my Opinion that The Attorneys Are Also Party To This Action. Key facts that Commissioner Campbell didn’t Consider Any Documents Enclosed, That’s Illustrates Direct Evidence That Both Attorney Submitted to Court and Myself Corroborating My Claim The Submission Attorney Submitted To Court On July 17, 2023 Which States The Hearing of My Claim. Submission (A and B).

And Attorney McKee Document Also Concerning my Worker Compensation Claim Submission: (C And D) Which He Promise Me That He Will Be Over Seeing My Claim And Promise Me things would Be Better, But that was untrue, 29 U.S.C. Section 1132 Promissory Estoppel in Which The Hearing He Lie Stating I Never Called Him Concerning His Promise. Also My Injury That Sustain Resulting from My Accident on 5/12/22 Were Never Fully Discuss. As I stated in The Hearing on July 30, 2024 I submitted

Document To Support my Claim as Being And Employee of Evans Delivery And Not an Independent Contractor. To Clarify My Understanding of The Law Commissioner Campbell Broke The Rule of Misconduct When He Violated My Civil Right, Rule 1,6 RPC, Rule 407 SCAR, Attorney, Client Privilege on Page 2 of The Order, And Also To Point Out Misconduct Concerning Both Attorney Rule 8.4 and Rule 8.3 Concealing Evidence, Attorney Hedlund Submission A&B, And Attorney McKee Submission C&D And Failing to Disclose All Relevant and False or Misleading Statement, Exhibit D, Evidence of This Information in The Order, Concerning Equipment, And How Many Days I Was Terminated After My Accident. Attorney McKee violated 8.4 and 8.3 Concealing Evidence, Failing To Disclose All Relevant Facts; Submission C&D, And To Point Out Key Evidence of Ownership By Evans Delivery Which I submitted To The Court July 30, 24 And August 2, 2023. Exhibit B and Exhibit E. And To Point Out Manipulation On Part of Both Attorney I'm Submitting Exhibit 30. Also I'm Pointing Out That The Contract Attorney Hedlund Was Expired. And it Consist Missing Provision.

5. After the Commission ruled, Appellant proceeded to file a document appearing to be a Notice of Appeal with the Court of Appeals on June 2, 2025; however, none of the Respondents were served with the filing, in violation of the appellate court rules. *See* Rule 203(a), SCACR (“A party intending to appeal must serve and file a notice of appeal and otherwise comply with these Rules.”); Rule 203(d)(3), SCACR (“If the notice of appeal is not timely filed . . . , the appeal shall be dismissed, and shall not be reinstated except as provided by Rule 260.”). While a proof of service appears to have been filed, no actual service was effectuated.
6. Respondents were first made aware of the appeal upon receiving a courtesy copy of responsive correspondence from the clerk of the South Carolina Court of Appeals, which apprised Appellant of the deficiencies with his filing and prompted an amended notice of appeal filed with the clerk’s office on July 2, 2025. The amended notice of appeal includes a proof of service again claiming to serve the documents on counsel of record; however, it fails to serve the filing on the administrative agency as required by the

appellate court rules. *See* Rule 203(d)(2)(B), SCACR (requiring for filing of a notice of appeal from administrative tribunals to be accompanied by a proof of service upon all parties of record and the administrative agency). Further, the amended proof of service was not received by counsel of record and counsel of record were again made aware of the filing only by virtue of responsive correspondence from the clerk's office.

7. Appellant's Initial Brief consists almost entirety of his own testimony complaining about the Commission's appellate process¹, arguments that were not before the Commission and are unpreserved for appellate review, complaints regarding his interactions with attorneys, citation to inapplicable federal and state statutes, self-serving complaints about the extent of his injury, employment background, and a request for an award of \$3,000.000.00.
8. To the extent that the submissions of Appellant can be discerned as issues, none of these were raised or ruled upon by the Commission below and thus are not preserved for appellate review. *See Rummage v. BGF Industries*, 434 S.C. 441, 455, 865 S.E.2d 380, 388 (Ct. App. 2021) ("Indeed, an oft-cited rule of appellate preservation instructs an issue must be raised to and ruled upon to be preserved for appellate review."). Due to the vague and ambiguity of the submission, Respondents are unable to meaningfully comprehend the issues presented in the appeal in order to submit a responsive brief that would be of benefit to the Court.

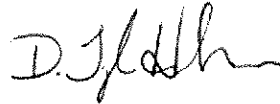
NOW THEREFORE, based upon the arguments presented above and pursuant to Rules 203 and 240 of the South Carolina Appellate Court Rules, Respondents move the South Carolina

¹ Part of the confusion is attributed to the full Commission initially remanding the case to a single commissioner to reconstruct the record. After the record was reconstructed, the appeal continued before the full Commission.

Court of Appeals for an Order dismissing this appeal, and staying the timeline for filing Respondent's brief until the motion is ruled upon pursuant to Rule 240(b), SCACR.

Respectfully submitted,

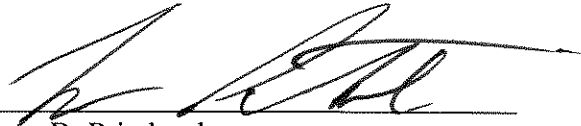
McANGUS GOUDELOCK & COURIE, LLC



July 30, 2025

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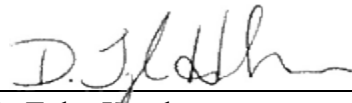
PROOF OF SERVICE

I certify that I have served the Motion to Dismiss Appeal with Supporting Memorandum on Benjamin Moses, by depositing a copy of it in the United States Mail, postage prepaid, on the 30th day of July, 2025 addressed to,

Benjamin Moses
281 Herbert Wilson Road
Dalzell, South Carolina 29040

Thomas B. Pritchard, Esquire
Vernis & Bowling of South Carolina, LLC
494 Savannah Highway, Suite A
Charleston, South Carolina 29407

July 30, 2025



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SC Court of Appeals

Reply To

D. TYLER HEMBREE
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July 30, 2025

VIA EMAIL and U.S. Mail

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: Benjamin Moses, Appellant v. Evans Delivery Co., Inc., et. al., Employer, Triumphe Casualty Co., Carrier, PeopLease, LLC, and National Interstate Insurance Company, Defendants, of which Evans Delivery Company, Inc., and Triumphe Casualty Co. are the Respondents
Our File No.: 20778.23020
Appeal No.: 2025-001114

Dear Ms. Kitchings:

Enclosed for filing please find the Respondents' Motion to Dismiss Appeal with Supporting Memorandum, and the Proof of Service concerning the same.

Our check in the amount of \$50.00 for filing the Motion will be sent via U.S. Mail with a copy of this letter.

If you have any questions, please contact me.

Very truly yours,



D. Tyler Hembree

DTH/ma
Enclosures

cc: Benjamin Moses (via U.S. Mail)
Thomas B. Pritchard, Esquire (via U.S. Mail and email)
Demetrice Street, National Interstate Insurance Company (via email)