

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

DEC 09 2013

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

SC Court of Appeals

70615

WCC FILE NO.: 1020830

Donald Bryant, Injured Worker, Respondent,

v.

Apex Tool Group, Employer, and
Hartford Fire Insurance Company, Appellants.

APPELLANTS' APEX TOOL GROUP.
AND HARTFORD FIRE INSURANCE COMPANY'S
MOTION TO REINSTATE APPEAL

Pursuant to Appellate Rules 240 and 260, SCACR, the Appellants Apex Tool Group and Hartford Fire Insurance Company hereby move to have the Appeal in this matter, which was administratively dismissed on October 30, 2012, reinstated.

The Appeal was dismissed due to Appellants' inadvertent failure to serve and file the Appellants' Initial Brief and Designation of Matter in the above-referenced claim.

Appellants received written notice of the Appellate Panel of the South Carolina Workers' Compensation Commission's Decision & Order on or about January 20, 2012. (Exhibit A). At that time, Appellants were represented by other counsel, Russell T. Infinger of Nexsen Pruet. Prior counsel timely filed a notice of appeal with this Court. (Exhibit B). However, prior counsel inadvertently failed to file an Initial Brief and Designation of Matter to be Included in the Record on Appeal and this Court subsequently dismissed the appeal. (Exhibit C).

This matter was transferred to present counsel only recently, on or about October 3, 2013. According to Matthew Somers of Apex Tool Group, and Beth Padgett of Sedgwick Claims Management, Appellants were not aware of the Court's dismissal until after the undersigned counsel was retained to investigate the matter, despite their efforts to monitor the appeal through previous legal counsel. (Exhibits D and E).

At this time, undersigned counsel requests that the Appeal be reinstated as the failure to file an Initial Brief and Designation of Matter to be Included in the Record on Appeal was inadvertent and not intended for the purpose of delay. Appellants are prepared to submit their Initial Brief within 30 days of reinstatement of this appeal.

Respectfully submitted,



Landon Hughey
Brett Bayne
McANGUS GOUDELOCK & COURIE, LLC
Meridian 10th Floor
1320 Main Street
P.O. Box 12519
Columbia, South Carolina 29211-2519
(803) 779-2300

Attorney for Appellants

December 6, 2013

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

SC Court of Appeals

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

WCC FILE NO.: 1020830

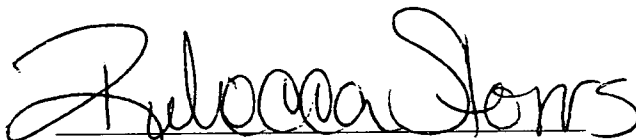
Donald Bryant, Injured Worker, Respondent,

v.

Apex Tool Group, Employer, and
Hartford Fire Insurance Company, Appellants.

PROOF OF SERVICE

I certify that I have served the Motion to Reinstate Appeal on Donald Bryant, by depositing a copy of it in the United States Mail, postage prepaid, on the 9th day of December, 2013, addressed to his attorney of record, Williams Ceth Land, Esquire, Land, Parker & Welch, P.A., 29 S. Mill Street, Manning, South Carolina 29102



Rebecca D. Storrs
Legal Assistant for Landon L. Hughey

Exhibit A

APPELLATE PANEL
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NUMBER: 1020830

DONALD BRYANT,
INJURED WORKER, RESPONDENT
VS.

APEX TOOL GROUP,
EMPLOYER,
AND
HARTFORD FIRE INSURANCE CO.,
CARRIER,
DEFENDANTS, APPELLANTS.

HEARING:

Held in Columbia, South Carolina, on the
14th day of November, 2011.

APPEARANCES:

Injured Worker was represented by
William Ceth Land, Esquire, of Land,
Parker & Welch, P.A., Post Office Box
138, Manning, South Carolina 29102. 5120314005543

Employer/Carrier was represented by
Russell T. Infinger, Esquire, of Nexsen
Pruet, P.O. Drawer 10848, Greenville,
South Carolina 29603-0848.

PANEL MEMBERS:

T. SCOTT BECK, CHAIRMAN
SUSAN S. BARDEN
G. BRYAN LYNDON

FILED:

1/20/12

STATEMENT OF THE CASE

The above matter was heard by Commissioner Avery B. Wilkerson on June 22nd, 2011 in Sumter, South Carolina. On July 22nd, 2011 the Commissioner issued a Decision and Order making the following Findings of Fact and Conclusions of Law:

1. That all parties to this proceeding are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act, as amended, with Apex Tool Group, as the Employer and Hartford Fire Insurance Co. as the Carrier, Defendants.
2. That the Injured Worker was an employee of Apex Tool Group on August 12, 2010, on which date he was injured by accident arising out of and in the course of his employment, when he injured his back while lifting a pan of wrench parts. This injury has caused radiating pain into both of his legs.
3. That the Injured Worker had a combined average weekly wage of Nine Hundred Nineteen and 17/100ths Dollars (\$919.17), resulting in a compensation rate of Six Hundred Twelve and 80/100ths Dollars (\$612.80), based on the stipulation of the parties.
4. That the Employer was notified on August 12th, 2010, when the Injured Worker told his supervisor, plant nurse and plant doctor that he had suffered a work related injury. The records of Dr. Byrd clearly states "picking up 30 lb. small pan of tools." (APA 8, p. 38).
5. That the Injured Worker is entitled to temporary total benefits from January 20th, 2011 continuing until further order of the Commission or agreement of the parties.

20120314005543

6. That the Injured Worker is entitled to payment of all related medical treatment and the Defendants shall provide additional reasonable medical treatment and care for the back and both legs.
7. That in the opinion of the undersigned Commissioner, the determination of permanent disability is premature in that the Injured Worker has not reached maximum medical improvement and is currently under the care of Dr. Donald R. Johnson, II.

It is the conclusion of this Commissioner that under the *1978 Code of Laws of South Carolina*, Title 42, Volume 15:

§42-1-40 governs "Average Weekly Wage"

§42-1-120 governs "Disability"

§42-1-130 governs "Employee"

§42-1-140 governs "Employer"

§42-1-150 governs "Employment"

§42-1-160 governs "Injury"; and "Personal Injury"

§42-9-200 governs "Dates on Which Compensation Shall Commence"

§42-9-260 governs "Payment of Temporary Benefits"

§42-15-20 governs "Notice of Accident"

§42-15-60 governs "Periods in Which Medical Treatment and Supplies Shall Be Furnished."

APPEAL

Within the statutory period, the attorney for the Employer/Carrier filed an Application for review, setting forth the following grounds for appeal:

1. Did the Single Commissioner err in finding that the Injured Worker was injured on August 12, 2010 when the weight of the evidence at the hearing did not support such a finding?
2. Did the Single Commissioner err in finding that the Injured Worker properly notified his employer of the alleged accident when the credible weight of the evidence did not support such a finding?
3. Did the Single Commissioner err in finding that the employer was notified of an accident when in so finding the Single Commissioner would have had to make a determination that an independent doctor was sufficient notice to the employer of an accident?
4. Did the Single Commissioner err in finding that the Injured Worker properly notified the employer of an accident on the date alleged when both the supervisor and the plant nurse testified that no such notice was given to them by the Injured Worker?
5. Did the Single Commissioner [err] in finding a compensable accident occurred as alleged when the weight of the credible evidence did not support that the Injured Worker was injured as he alleged?
6. Did the Single Commissioner err in awarding medical and indemnity benefits to the Injured Worker for an accident on August 12, 2010 when both lay and medical evidence did not support a finding that the Injured Worker sustained an injury as he alleged?

This matter was heard before the Appeals Panel on November 14, 2011. The Panel considered the matter and adopt all of the Findings of Fact and Conclusions of Law issued by the Hearing Commissioner, as if restate verbatim herein, save and except Finding of Fact Number 2. This Finding is replaced with the following Finding of Fact:

2. That the Injured Worker was an employee of Apex Tool Group and he was injured by accident arising out of and in the course of his employment on or about August 12, 2010, on which date when he injured his back while lifting a pan of wrench parts. This injury has caused radiating pain into both of his legs.

ORDER

IT IS, THEREFORE, ORDERED, that the Defendants shall pay to the Injured Worker temporary total benefits at the compensation rate of Six Hundred Twelve and 80/100ths Dollars (\$612.80) per week retroactively to January 20, 2011 and continuing until further Order of this Commission or agreement of the parties.

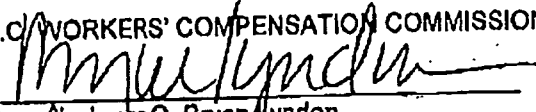
IT IS FURTHER ORDERED, that the Defendants shall be responsible for all causally related medical expenses, past and future, to the back and both lower extremities.

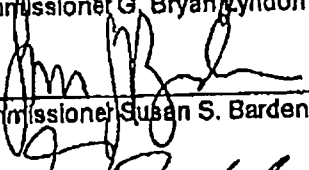
IT IS FURTHER ORDERED, that the degree of permanent disability and loss of use of the back and both lower extremities is premature at this time.

No hearing costs are assessed in this instance.

AND IT IS SO ORDERED.

S.C. WORKERS' COMPENSATION COMMISSION


Commissioner G. Bryan Lyndon


Commissioner Susan S. Barden


Commissioner T. Scott Beck

20120314005542

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served this order in the above named action upon all parties to this cause by depositing a copy hereof, postage paid, in the United States mail addressed to the attorney or attorneys for said parties.

This 20 day of January, 2012
By Valerie D. Datter
Administrative Assistant to the Commissioner

Russell T. Infante
William C. Land

Exhibit B

NEXSEN|PRUET

Russell T. Infinger
Member
Admitted in SC, MS

February 17, 2012

The Honorable Tanya A. Gee
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

Re: Donald Bryant, Respondent v. Apex Tool Group, Inc. and Hartford Fire Insurance
Company, Appellants

Dear Ms. Gee:

Enclosed for filing is a Notice of Appeal in the above case. Also enclosed are the following:

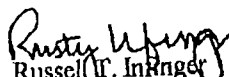
- (1) Proof of service of the Notice of Appeal on the Respondent and on the South Carolina Workers' Compensation Commission.
- (2) A copy of the Order which is being challenged on appeal.
- (3) A filing fee of \$100.00

Charleston
Charlotte
Columbia
Greensboro
Greenville
Hilton Head
Myrtle Beach
Raleigh

Please return one clocked copy of the Notice of Appeal in the enclosed self-addressed, stamped envelope. By way of a copy of this letter, the South Carolina Workers' Compensation Commission and respondent's counsel is being served.

Thank you for your assistance in this matter. Please call with any questions.

Very truly yours,


Russell T. Infinger
RTI/jws

Enclosures

cc: William Ceth Land, Esq.
✓ SC Workers' Compensation Commission

55 East Campground Way
Suite 400 (29801)
PO Drawer 10848
Greenville, SC 29603-0848
www.nexsenpruet.com

T 884.282.1122
F 884.477.2811
E Rinfinger@nexsenpruet.com
Nexsen Pruet, LLC
Attorneys and Counselors at Law

SCWCC

FEB 23 2012

JUDICIAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SOUTH CAROLINA

WORKERS' COMPENSATION COMMISSION

WCC FILE NO. 1020830

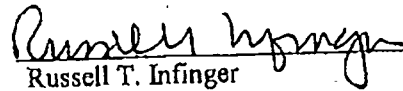
Donald Bryant.....Respondent,

v.

Apex Tool Group, LLC and Hartford Fire Insurance Company, Employer....Appellants.

NOTICE OF APPEAL

Apex Tool Group, LLC and Hartford Fire Insurance Company appeal the Order of The South Carolina Workers' Compensation Commission dated January 20, 2012. Appellants received a copy of this Order on January 20, 2012.


Russell T. Infinger
NEXSEN PRUET, LLC
PO Drawer 10648
Greenville, South Carolina 29603
Tel: 864-282-1122

rinfinger@nexsenpruet.com

Attorney for Appellants

February 17, 2012

Other Counsel of Record:

**William Seth Land
Land, Parker & Welch, PA
P.O. Box 138
Manning, SC 29102**

Attorney for Respondent

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission

WCC FILE NO. 1020830

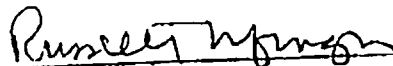
Donald Bryant.....Respondent,

v.

Apex Tool Group, LLC and Hartford Fire Insurance Company,.....Appellants.

PROOF OF SERVICE

I certify that I have served the foregoing Notice of Appeal on Donald Bryant by depositing a copy of same in the United States Mail, postage prepaid, on February 17, 2012, addressed to his attorney of record, William Ceth Land, Land, Parker & Welch, PA P.O. Box 138, Manning, SC 29102.



Russell T. Infinger
NEXSEN PRUET, LLC
PO Drawer 10648
Greenville, South Carolina 29603
Tel: 864-282-1122

rinfinger@nexsenpruet.com

Attorney for Appellants

February 17, 2012

Exhibit C

1020830

The South Carolina Court of Appeals

Donald Bryant, Injured Worker, Respondent,

v.

Apex Tool Group, Employer, and Harford Fire Insurance
Co., Appellants.

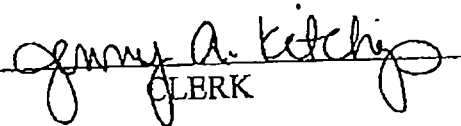
Appellate Case No. 2012-208486

ORDER

Appellants have failed to serve and file the appellants' initial brief and designation of matter, as required by Rules 208 and 209 of the South Carolina Appellate Court Rules. Accordingly, this matter is dismissed. The remittitur will be sent as provided by Rule 221(b), SCACR.

FOR THE COURT

BY


CLERK

Columbia, South Carolina

cc:

William Ceth Land
Russell Thomas Infinger

FILED

10/30/12

Exhibit D

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 1020830

DONALD BRYANT,

Employee,

Claimant,

vs.

APEX TOOL GROUP,

Employer,

AND

HARTFORD INSURANCE COMPANY OF
THE MIDWEST C/O SEDGWICK CLAIMS
MANAGEMENT SERVICES, INC.

Carrier,

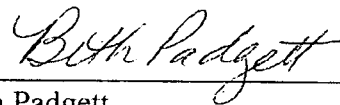
Defendants.

AFFIDAVIT OF BETH PADGETT

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION AND WILLIAM
CETH LAND, ESQUIRE:

1. My name is Beth Padgett and I am an employee of Sedgwick Claims Management Services, Inc.
2. Currently, I am the adjuster for the above referenced workers' compensation claim.
3. At the present time, our counsel of record for this claim is Rocky Hughey of McAngus, Goudelock & Courie.
4. Prior to transferring this file to Mr. Hughey, our attorney was Rusty T. Infinger of Nexsen Pruet.
5. While Mr. Infinger was our counsel of record, an appeal of the Full Commission Decision and Order was filed with the South Carolina Court of Appeals.

6. This appeal was filed on February 17, 2012.
7. Following the filing of the appeal, there was very little communication between our office and Mr. Infinger's office.
8. On February 11, 2013, my office sent an email to Mr. Infinger inquiring about the status of the appeal. No reply was received.
9. Again on February 26, 2013, my office sent an email to Mr. Infinger inquiring about the status of the appeal. Again, no reply was received.
10. In July 2013, additional emails were sent to Mr. Infinger inquiring about the status of the appeal. Again, no reply was received.
11. Mr. Hughey was then retained to handle this file on or about October 3, 2013.
12. After retaining Mr. Hughey, I found out on or about October 11, 2013 that the appeal had been dismissed for failure to serve and file the Appellants' Brief and designation of matter on October 30, 2012.
13. Upon information and belief, I was never informed that the appeal had been dismissed.



Beth Padgett
Sedgwick Claims Management

Columbia, South Carolina
November 5, 2013

Exhibit E

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 1020830

DONALD BRYANT,

Employee,

Claimant.

vs.

APEX TOOL GROUP,

Employer.

AND

HARTFORD INSURANCE COMPANY OF
THE MIDWEST C/O SEDGWICK CLAIMS
MANAGEMENT SERVICES, INC.

Carrier,

Defendants.

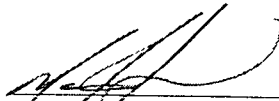
**AFFIDAVIT OF MATTHEW
SOMERS**

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION AND WILLIAM
CETH LAND, ESQUIRE:

1. My name is Matthew Somers and I am an employee of Apex Tool Group.
2. At the present time, our counsel of record for this claim is Rocky Hughey of McAngus, Goudelock & Courie.
3. Prior to Mr. Hughey, our attorney was Rusty T. Infinger of Nexsen Pruet.
4. While Mr. Infinger was our counsel of record, an appeal of the Full Commission Decision and Order was filed with the South Carolina Court of Appeals.
5. This appeal was filed on February 17, 2012.
6. Mr. Hughey was then retained to handle this file on or about October 3, 2013.
7. After retaining Mr. Hughey, I found out on or about October 11, 2013 that the appeal had

been dismissed for failure to serve and file the Appellants' Brief and designation of matter on October 30, 2012.

8. Upon information and belief, I was never informed that the appeal had been dismissed.


11/07/2013
Matthew Somers
Apex Tool Group

Columbia, South Carolina
November 5, 2013