

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

WCC FILE NO: 1020830

RECEIVED

DEC 23 2013

SC Court of Appeals

Donald Bryant, Injured Worker,Respondent,

v.

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

RESPONDENT'S REPLY TO MOTION TO
REINSTATE APPEAL

The Appellants seek to reinstate the appeal in the above entitled matter pursuant to Rule 260. The standard under Rule 260 to reinstate an appeal is "good cause shown." The Appellants base their request on the failure of their previous attorney to timely file the Initial Brief and Designation of Matter to be Included in the Record on Appeal. However, they offer no explanation of why the previous attorney failed to timely make the required filings or state what is their "good cause" for reinstating the appeal.

The "good cause" standard for Rule 260 is also the standard for setting aside a default under Rule of Civil Procedure 55(c). The case of Sundown Operating Company, Inc. vs. Intedge Industries, Inc., 681 S.E.2d 885, 383 S.C. 601 (2009) dealt with a party's insurance agent failing to forward a Complaint to an attorney to file an Answer. The Court writes "[the good cause] standard requires the party seeking relief from an

entry of default under Rule 55(c) to provide an explanation for the default and give reasons why vacation of the default entry would serve the interest of justice.” Id. at 888. The Court found that the moving party in Sundown did not show good cause when it argued that the default should be set aside because the failure of the party’s insurance agent to forward the Complaint to an attorney to be answered. The Court writes “this argument is without merit, as the law is clear that an attorney or insurance company’s misconduct is imputed to the client”. Id. at 889.

In the present case the Appellants argue the appeal should be reinstated because their previous attorney “inadvertently failed to file an Initial Brief and Designation of Matter To Be Included In the Record.” The same logic that was applied in the Sundown case should be applied here to find that the actions of an attorney failing to timely act upon an appeal is not “good cause shown.”

This Court should also look at the time periods that are involved in the case at bar. The appeal in the present matter was dismissed on October 30, 2012 and the Appellants have waited over thirteen (13) months to file this Motion to Reinstate Appeal. This delay in time should not be ignored by this Court. In the case of State vs. Sheldon, 57 S.E. 1111, 77 S.C. 74 (1907) the Defendant was convicted of murder in January of 1906 and sentenced to be hung. In that case an appeal was filed, but it was dismissed on May 15, 1906 due to lack of prosecution. It was not until February 28, 1907 that the Defendant filed a Motion to Reinstate Appeal. In its ruling of May 1, 1907 the Court wrote “the delay and neglect to prosecute this appeal has been so inexcusable and unreasonable that in an ordinary case the Court would not have hesitated to refuse the motion” to reinstate the appeal. The Court concludes by writing “It is therefore ordered

that the motion to reinstate the appeal be dismissed and the order of the Chief Justice heretofore made staying the execution of the sentence be revoked". Id. at 1111. Certainly if the Court finds that a yearlong delay in a capital murder case to be "inexcusable and unreasonable" then this Court should find that the same prolonged delay in a worker's compensation case is "inexcusable and unreasonable" and deny the Appellant's motion.

Respectfully submitted.

LAND, PARKER & WELCH, P.A.

By: 

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December 20, 2011

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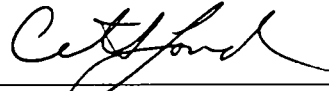
CERTIFICATE OF SERVICE

I hereby certify that due and proper service of the documents described below was made on the 20th day of December, 2013, by depositing a true copy of same in the United States mail at Manning, South Carolina, in an envelope with adequate first-class postage duly affixed and return address clearly indicated thereon and addressed to:

The Honorable Jenny A. Kitchings (ORIGINAL AND SIX COPIES)
S.C. Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

Mr. Landon Hughey, Esquire
McAngus, Goudelock & Courie, LLC
P.O. Box 12519
Columbia, South Carolina 29211

Description of Documents:
**RESPONDENT'S REPLY TO MOTION
TO REINSTATE APPEAL**



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