

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission

Susan S. Barden, Melody L. James and Avery B. Wilkerson, Jr., Commissioners

WCC File No. 0902416

John Hart, Employee, Appellant,

v.

Owen Steel Company, Employer, and Old Republic Insurance Company, Carrier,
..... Respondents.

BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the Appellate Panel of the Workers Compensation Commission err by holding it lacked authority to reverse the Single Commissioner's unsubstantiated award of \$1,500.00 in attorney's fees when the Panel granted the Employer's appeal as to "the lack of specificity as to how the calculations were arrived at;" required additional evidence; and as, the ultimate trier of fact, made its own contrary findings based on the additional evidence that "The total of attorney's fees and costs involved in enforcing the Order is \$6,407.50."

STATEMENT OF THE CASE

This is an appeal originating in the Workers' Compensation Commission. Appellant, John Hart (also identified as "Claimant"), was employed by Respondent, Owen Steel Company (hereafter "Employer"), at its plant in Columbia, South Carolina. Hart was injured on March 16, 2009 when an air tool he was using exploded, sending the metal baseplate flying into his face, breaking several teeth, and knocking him unconscious. He suffers from problems with his teeth (most of which he lost as a result of the accident); chronic headaches; jaw and facial pain; depression; and mild cognitive deficits.

Hart filed a workers' compensation claim for these injuries. Employer admitted Hart had been injured in an accident arising out of and in the course of his employment. Employer began providing certain medical benefits.

Prior Procedural History:

Following the accident, Employer provided light duty work to Hart within his restrictions. Hart worked light duty continuously until August 16, 2009, when he was one of 37 people laid off in a mass layoff. Instead of paying temporary total disability compensation, Employer filed a claim for unemployment benefits on Hart's behalf. Employer also began providing dental treatment.

On April 23, 2010, Hart filed a Form 50 seeking payment of temporary compensation, ongoing medical treatment including treatment with a neurologist, and mileage reimbursement for medical treatment. [R. Page 60].

On May 21, 2010, Employer filed a Form 51 admitting the claim and liability for medical benefits, but denying liability for temporary total compensation. [R. Page 62]. On June 4, 2010, Employer filed an Amended Form 51 admitting injury only for dental work. [R. Page 63].

On July 28, 2010, the case was tried before Commissioner Scott Beck. On September 1, 2010, Commissioner Beck issued a Decision and Order with the following pertinent instructions:

IT IS THEREFORE ORDERED that the Employer shall pay temporary total disability to Claimant in the amount of \$384.35 per week commencing on November 19, 2009 and continuing until further order of the Commission;

IT IS FURTHER ORDERED that the Employer shall immediately and without delay authorize and pay for all medical and surgical treatment prescribed or recommended by the authorized treating physicians related to Claimant's injury, including prescriptions, testing, physical therapy and all other treatment including treatment rendered by other providers to whom Claimant is referred by the authorized treating physician. Treatment shall be provided until Claimant has reached maximum medical improvement and thereafter so long as such post-MMI treatment tends to lessen Claimant's period of disability;

IT IS FURTHER ORDERED that Employer shall promptly and without delay reimburse Claimant for travel expenses at the current statutory mileage rate for medical treatment to and from his home in Georgia to authorized medical providers;

IT IS FURTHER ORDERED that Employer shall promptly and without delay schedule and authorize an evaluation by a neurologist, and if further treatment by a neurologist will tend to lessen Claimant's period of disability, said treatment shall be provided;

[R. Pages 9-10].

On September 16, 2010, Employer filed a Form 30 (Notice of Appeal) appealing the finding that Hart was entitled to be paid temporary total disability compensation. [R. Page 64]. No other issues were appealed.

On December 14, 2010, oral arguments were held before the Appellate Panel. On February 1, 2011, the Appellate Panel affirmed the Decision and Order of the Single Commissioner. [R. Pages 21-29]. No further appeal was taken.

During the pendency of the appeal to the Appellate Panel, Employer did not comply with the unappealed portion of the Single Commissioner's Decision and Order directing them to "promptly

and without delay reimburse Claimant for travel expenses at the current statutory mileage rate.” On October 14, 2010, Hart filed a Motion for Order and Rule to Show Cause requesting penalties and attorney’s fees . [R. Pages 66-70, 133-147].

On November 19, 2010, arguments on the Motion were heard before Commissioner Scott Beck. On January 4, 2011, Commissioner Beck issued a Decision and Order with the following instructions:

IT IS THEREFORE ORDERED that the Employer and Carrier shall immediately and without delay pay \$1,000.00 to Samuels Law Firm, LLC, for attorney’s fees;

IT IS FURTHER ORDERED that the Employer and Carrier shall immediately and without delay pay \$137.70 to Claimant;

IT IS FURTHER ORDERED that the Employer and Carrier shall pay all future mileage reimbursements within 14 days of actual receipt by the Carrier and/or the Attorney of written reimbursement requests submitted by the Claimant. Any failure to make payment within the 14 day time period will be deemed to be wilful and contumacious, subjecting Defendants to further sanctions under § 42-3-150 and § 42-3-175.

[R. Pages 12-20].

No appeal was taken from this Order.

Current Procedural History:

On April 16, 2012, Hart filed a second Motion for Rule and Order to Show Cause. Hart made the following prayer for relief:

THEREFORE, Claimant request Defendants be Ordered to Appear and Show Cause for their failure to comply with the Order of the Commission; to be ordered to provide a treating neurologist, neuropsychologist, psychiatrist and oral surgeon of Claimant’s choosing; to be reported to the Department of Insurance; and further to pay to Claimant an appropriate amount for attorney’s fees and costs associated with this Motion, and for such other sanctions as the Commission finds appropriate to ensure enforcement of its Order.

[R. Pages 71-76, 148-155].

A hearing was originally set on the Motion for May 30, 2012. The hearing was removed from the docket based on counsel advising the Commission that the matter had been resolved on a Consent Order. The parties were unable to finalize the agreement so, on the request of Hart, the case was restored to the hearing roster. [R. Pages 156-171]. The hearing was held before Commissioner Scott Beck on August 23, 2012.

The hearing was not transcribed. Commissioner Beck heard arguments from counsel and reviewed documentary evidence submitted by Hart. [R. Pages 148-227]. At the hearing, counsel for Employer stated his client consented to Dr. Berger and Dr. Rogers as the treating dentist and neurologist, and had authorized all treatment ordered by these doctors. Counsel further stated Defendants had agreed to a psychological and psychiatric evaluation by Post Trauma Resources, but had not yet consented to treatment as the psychological claim had not been accepted nor previously ordered.

Among the documents presented was an e-mail dated June 3, 2011, from the claims adjuster, Tara Potter, stating in pertinent part, “”Mileage is excessive and I do not intent [sic] to cover it.” [R. Page 221]. Counsel for Employer admitted the denied mileage was for a trip to the pharmacy to fill a prescription written by an authorized treating physician. [R. Page 34].

On October 10, 2012, Commissioner Beck issued a Decision and Order with the following pertinent instructions:

IT IS THEREFORE ORDERED that the Employer and Carrier shall immediately and without delay pay \$4,380.00 to the South Carolina Workers' Compensation Commission as a statutory fine for wilful disobedience of an order pursuant to S.C. Code Ann. § 42-3-175 (2007);

IT IS FURTHER ORDERED that the Employer and Carrier shall immediately and without delay pay \$1,500.00 to Samuels Law Firm, LLC, for attorney's fees for

enforcing an order pursuant to S.C. Code Ann. § 42-3-175 (2007);

IT IS FURTHER ORDERED that the Employer and Carrier shall pay \$227.76 to Claimant within fourteen days of this hearing;

IT IS FURTHER ORDERED that the undersigned Commissioner will retain jurisdiction with respect to any further proceedings involving penalties, sanctions, contempt and enforcement of any previous Orders in this case;

* * *

IT IS FURTHER ORDERED that the Employer and Carrier shall pay all future mileage reimbursements within 14 days of actual receipt by the Carrier and/or the Attorney of written reimbursement requests submitted by the Claimant. Any failure to make payment within the 14 day time period will be deemed to be wilful and contumacious, subjecting Defendants to further sanctions under § 42-3-150 and § 42-3-175.

[R. Pages 39-41].

In his Order, Commissioner Beck held:

Defendants shall pay the Claimant's attorney's fees in the amount of \$1,500.00, pursuant to § 42-3-175. I find Claimant's attorney's representation of the amount of time he and his staff spent on enforcing this order to be accurate and reasonable. His efforts are amply documented by the e-mails and letters submitted to the Commission.

[Finding of Fact 7, R. Page 36].

Commissioner Beck declined to accept an affidavit from Hart's attorney supporting an award of attorney's fees and costs.

On October 22, 2012, Employer timely filed a Form 30 (Notice of Appeal). [R. Pages 77-78].

On January 3, 2013, Employer timely filed its Appellants' Brief to the Full Commission. [R. Pages 79-84]. On January 18, 2013, Hart filed his Brief of Claimant/Respondent. [R. Pages 80-84].

On February 20, 2013, oral arguments were held before the Appellate Panel. During oral

argument, Employer abandoned the issue over the statutory penalty of \$4,380.00. Argument went forward on the remaining procedural issues surrounding the award of attorney's fees.

Employer specifically contested "the lack of specificity as to how the calculations were arrived at . . . and the manner in which the relief in this case was provided." [R. Page 117, lines 4-10]. Hart's attorney argued that an affidavit supporting the award of attorney's fees was required. However, Hart's attorney further stated:

This body has to revisit that issue entirely. And if the basis of the appeal is it's got to be supported by evidence and that – and only evidence, of course, would be an affidavit, then it's up to this body, you know, I think to accept the affidavit and rule based on the affidavit whether it's more or less or the same. [R. Page 125, lines 9-16].

Immediately following oral argument, the Appellate Panel instructed Hart's attorney to submit an affidavit in support of his claim for attorney's fees.

On February 25, 2013, Hart's counsel submitted an affidavit and time sheet documenting actual time spent enforcing the previous Order. The affidavit supported an award of fees and costs of \$6,407.50. [R. Pages 97-103].

On February 26, 2013, Employer's counsel e-mailed the members of the Appellate Panel objecting to the affidavit on two grounds:

1. Following the hearing before the Full Commission, it was my understanding that claimant's counsel was to submit an affidavit substantiating the \$1,500.00 attorney's fee provided by Commissioner Beck. The affidavits submitted this afternoon would seem to suggest that claimant's counsel is now requesting attorney's fees in excess of those fees awarded by Commissioner Beck. The amount of the attorney's fee was not appealed by claimant's counsel to the Full Commission.
2. Based on a review of the affidavits submitted, there appears to be documentation of fees for activities performed after the hearing before Commissioner Beck, including activities related to the hearing before the Full Commission Panel. I am not aware of any directive from the Full Commission Panel that claimant's

counsel was to submit a request for (or information related to) payment of fees for activities performed following the hearing before Commissioner Beck. Furthermore, I am unaware of any request on the part of claimant's counsel that he sought fees for activities related to the hearing before the Full Commission.

[R. Page 230].

On February 26, 2013, Hart's counsel responded via e-mail:

Regarding point 1, my understanding is that I was to submit an affidavit substantiating an award of attorney's fees pursuant to S.C. Code Ann. § 42-3-175. The statute provides that an insurer "must pay the claimant's attorneys' fees and costs of enforcing the order." I understand Mr. Lockhart makes the argument that the attorney's fees are limited to \$1,500 because that was Commissioner Beck's ruling and only the Defendants appealed. However, I made it clear in the Respondent's Brief and at oral argument that once the amount of attorney's fees are at issue on appeal, the Appellate Panel has both the authority and the duty to set the amount based on the actual time spent at the particular attorney's hourly rate. The risk one takes in appealing any award is that the Appellate Panel is free to increase or decrease the amount as it interprets the law and evidence. You don't get a free second bite at reducing an award merely because the other side did not appeal. I therefore submitted an affidavit documenting the total time for attorney's fees spent by myself and my paralegal enforcing the order.

Regarding point 2, Mr. Lockhart is correct that the time sheet includes time after the Rule to Show Cause hearing. It includes travel time back to my office from North Augusta immediately after that hearing, time spent drafting the proposed Order per Commissioner Beck's instructions, and time spent briefing and arguing the appeal. I believe all of these items are appropriately included as "attorneys' fees and costs of enforcing the order." My time spent in responding to an appeal is clearly part of enforcing the order time which would not have been required had Defendants simply complied. The law is well-established that an award of attorney's fees from an opposing party necessarily includes attorney time spent responding to motions, appeals, and other actions taken by counsel. Furthermore, Defendants have still not fully complied with the Order despite their admission at oral argument that they were abandoning all issues except the award of attorney's fees.

[R. Pages 228-229].

On April 16, 2013, the Appellate Panel issued an Order affirming Commissioner Beck's Order. [R. Pages 43-59]. The Appellate Panel found as a fact that "The total of attorney's fees and costs involved in enforcing the Order is \$6,407.50." [Finding of Fact 9, R. Page 51]. Despite this

factual finding, the Appellate Panel affirmed the \$1,500.00 attorney's fee award reasoning:

Claimant did not appeal the amount of attorney's fees awarded by the Single Commissioner; only Defendants appealed. Claimant may not benefit from Defendants' appeal. We therefore find the \$1,500.00 attorney's fee award is the law of the case as to Claimant. See Floyd v. Floyd, 615 S.E.2d 465, 365 S.C. 56 (Ct. App. 2005)(law of the case rule applied where party failed to challenge amount of attorney's fees awarded). The Appellate Panel lacks authority to reverse an unappealed finding of a Single Commissioner. We therefore affirm the finding that Defendants are to pay \$1,500 in attorney's fees.

[Finding of Fact 11, R. Page 51].

On May 16, 2013, Appellant timely filed and served his Notice of Appeal.

ARGUMENT

Once the Appellate Panel accepts additional evidence on a factual issue appealed by a party, the Appellate Panel has authority as the ultimate trier of fact to reverse the Single Commissioner and make its own findings based on the additional evidence.

The issue in this workers' compensation case is whether the amount of "attorney's fees and costs of enforcing the order" under §42-3-175 should be based on an additional evidence required by the Appellate Panel or on a lower amount previously made by a Single Commissioner without any evidentiary basis. The Appellate Panel found as a fact that "The total of attorney's fees and costs involved in enforcing the Order is \$6,407.50." [Finding of Fact 9, R. Page 51]. S.C. Code Ann. §42-3-175 (2007). However, it affirmed the Single Commissioner's finding that the attorney's fees were \$1,500.00, stating the "Appellate Panel lacks authority to reverse an unappealed finding of a Single Commissioner." [Finding of Fact 11, R. Page 51].

While this is a correct statement of the general rule, the Panel overlooked the fact that the Single Commissioner's finding on attorney's fees *was* appealed, albeit by Employer. Moreover, the Panel agreed with the Employer Appellant that the award of attorney's fees could not stand because the Panel "would be unable to identify the basis for the award of attorney's fees provided by the Single Commissioner." [R. Page 83]. The Panel effectively granted the Employer's appeal by requiring Hart to submit an affidavit substantiating the time and costs involved in enforcing the previous orders of the Commission. As such, once the Appellate Panel made new findings based on additional evidence, there was a new order with a new ruling that was appealable by Hart.

The Employer appealed virtually every aspect of the attorney's fee award to the Appellate Panel. Employer contested the amount awarded, the evidentiary foundation for the award, the lack

of sworn testimony supporting the time spent by Hart's attorney; and the reasonableness of the award as a matter of law.¹ At oral argument, Employer argued the Single Commissioner's Order must be vacated because of "the lack of specificity as to how the calculations were arrived at . . . and the manner in which the relief in this case was provided." [R. Page 117, lines 4-10]. None of this is any different than the issue raised on appeal to this Court. The ultimate issue is still the proper amount of attorney's fees to be awarded based on the evidence in the record. This is not a new issue. As the issues on attorney's fees were raised to and ruled upon by the Appellate Panel, the law of the case doctrine does not apply.

The Appellate Panel made numerous findings and rulings not made by the Single Commissioner. It ordered Hart to submit "an affidavit substantiating the attorney's fees and costs of enforcing Commissioner Beck's previous order." [Finding of Fact 8, R. Page 51]. Based on the new evidence, it found as a fact that "The total of attorney's fees and costs involved in enforcing the Order is \$6,407.50." [Finding of Fact 9, R. Page 51]. It made "specific findings of fact on the

¹In the Form 30 (Notice of Appeal), Employer raised the following exceptions:

Did the Single Commissioner err in finding as a matter of fact that Defendants shall pay the claimant's attorney's fees in the amount of \$1,500.00 pursuant to Section 42-3-175?

Did the Single Commissioner err in finding as a matter of fact that the Claimant's attorney's representation of the amount of time he and his staff spend on enforcing this Order to be accurate and reasonable, that the Claimant's attorney's efforts were amply documented by the emails and letters submitted to the Commission, and that the Commission has the explicit authority to Order a Defendant to pay the Claimant's attorney's fees and costs of enforcing the Order?

Did the Single Commissioner err in concluding as a matter of law that the award of \$1,500.00 in attorney's fees is reasonable in light of the demonstrated time spent and efforts made by the Claimant's attorney to enforce the Order?

[R. Pages 64-65].

record for each of the required factors to be considered [in an award of attorney's fees]." [Finding of Fact 10, R. Page 51]. These new rulings were entirely the result of the appeal.

Both the briefs and oral arguments before the Appellate Panel confirm that everyone – including the Commissioners – was on the same page regarding the need for an affidavit. Employer's attorney argued "We think that the Commissioner's order lacks specific information as to the basis for the fees that were awarded in this particular case." [R. Page 112, lines 11-14].

Commissioner James asked Employer's counsel:

And maybe it's because we don't have an actual hearing record here, but is there any way where the Commissioner indicates where his time – where the time is broken out and how he's determined – he's calculated attorney's fees? Because, you know, in other – in other venues – and this has to do the same with this venue; in fact, it was part of the origination of this Form 61-A or whatever the name is on it – is to, you know, hourly rate, time involved, benefit to the client.
[R. Page 116, lines 7-25].

The issue was also discussed by Hart's attorney:

At the hearing, I had offered to Commissioner Beck to prepare an affidavit documenting the time that I and my staff spent on enforcing the order. He declined to accept an affidavit. We spent a lot more time, if you consider all of the emails, the proposed consent order that was rejected by Defendants, advising the Commission that the hearing was off and then advising the Commission the hearing was back on because of the dispute over the consent order, numerous efforts to try to do these things, including the drafting of the motion and filing of the motion.
[R. Page 118, lines 3-15].

The discussion then moved to what would happen if the Appellate Panel accepted an affidavit as additional evidence. The parties agreed the regulations allowed the Panel to accept the affidavit directly without remanding back to the Single Commissioner. [R. Page 121, lines 18-22; page 122, lines 15-20]. Commissioner Wilkerson then asked Employer's counsel: "If his office does an affidavit and it's nine hours, y'all are going to pay that, right?" [R. Page 122, lines 21-23]. Counsel

responded: “Your Honor, I think that’s – that’s a decision that lies with you all as the ultimate Finder of Fact.” [R. Page 18, lines 3-15].

From there, the Panel noted “the affidavit itself could even be more than what’s been awarded,” followed up with a question to Hart’s counsel that as he did not appeal, “aren’t we really stuck with looking at the \$1,500?” [R. Page 123, line 22-page 124, line 20]. Hart’s counsel responded:

But my point is, if Mr. Lockhart appeals it – you know, there are times when we appeal a permanency award because we thought it was too low and the Appellant [sic] Panel comes back lower. I mean, that’s the risk you take, you know.

This body has to revisit that issue entirely. And if the basis of the appeal is it’s got to be supported by evidence and that – and only evidence, of course, would be an affidavit, then it’s up to this body, you know, I think to accept the affidavit and rule based on the affidavit whether it’s more or less or the same.

[R. Page 125, lines 3-16].

The Appellate Panel disagreed with the above argument. It interpreted the law of the case doctrine to mean that only the original appellant can benefit from the appeal – even if the later appeal involves a factual finding made on additional evidence not before the original trier of fact. Such a rule is illogical. It would bar appeals after remands to take additional evidence. Indeed, it would compel the trier of fact to affirm the previous ruling even if it made new findings of fact because of the additional evidence – as happened here.

The Appellate Panel could have vacated the attorney’s fee award and remanded back to the original commissioner for the taking of additional evidence on the issue. Had they done this, there is no question the Single Commissioner’s order on remand would have been appealable.² See Wise

²Had the Appellate Panel remanded the case back to the Single Commissioner, the Panel’s Order would be interlocutory and unappealable. See Bone v. U.S. Food Service, 744 S.E.2d 552, 404 S.C. 67 (2013).

v. Wise, 394 S.C. 591, 716 S.E.2d 117 (Ct. App. 2011)(interlocutory ruling regarding additional evidence is not the law of the case). Cf. Lizee v. South Carolina Dept. of Mental Health, 623 S.E.2d 860, 367 S.C. 122 (Ct. App. 2005)(remanding for additional findings of fact and recognizing the Commission has discretion to “take additional evidence to accomplish the remand objective.”). They also could have summarily affirmed the Single Commissioner – in which case Hart would be barred by the law of the case doctrine.

However, unlike an appellate court, the Full Commission is the ultimate trier of fact. As such, a remand is not necessary. Accordingly, the Panel exercised its discretion to accept the affidavit directly as “additional evidence . . . necessary for the completion of the record in a case on review . . .” and made its own finding of fact. 25A S.C. Code Ann. Reg. 67-707 (2007). See, also Pilgrim v. Eaton, 703 S.E.2d 241, 391 S.C. 38 (Ct. App. 2010)(“On remand, the commission must determine whether to allow the parties to present additional evidence, or to make the calculation based on the evidence already in the record. ”). The Appellate Panel(1) effectively vacated the decision below as unsupported by the evidence;³ (2) held completion of the record required an affidavit from Hart’s attorney (a request denied by the Single Commissioner); and (3) reviewed the additional evidence and found as a fact that “The total of attorney’s fees and costs involved in enforcing the Order is \$6,407.50.” [Finding of Fact 9, R. Page 51]. Despite this finding, the Panel ultimately affirmed the Single Commissioner based on the new legal ruling that “Claimant may not

³In their brief to the Appellate Panel, Employer requested “that the Full Commission vacate the Decision and Order of the Single Commissioner.” [R. Page 84, page 6]. The Appellate Panel withheld a ruling on the appeal until it received additional evidence – thus effectively ruling that an unsubstantiated order of attorney’s fees cannot stand. The \$1,500 award was ultimately affirmed under the law of the case doctrine – even though inconsistent with the additional evidence and the Appellate Panel’s factual finding as to the actual attorney’s fees and costs involved in enforcing the Order.

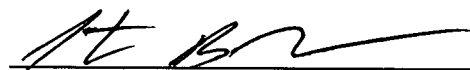
benefit from Defendants' appeal. We therefore find the \$1,500.00 attorney's fee award is the law of the case as to Claimant." [Finding of Fact 11, R. Page 51].

The law of the case doctrine does not bar a party from appealing findings made after the submission of additional evidence needed to complete the record – even if it was the opposing party's appeal that resulted in the additional evidence being necessary. "Under the law of the case doctrine, a party is precluded from relitigating, after an appeal, matters that were either not raised on appeal, but should have been, or raised on appeal, but expressly rejected by the appellate court." Judy v. Martin, 674 S.E.2d 151, 381 S.C. 455 (2009). The Appellate Panel made a different factual finding than made by the Single Commissioner because the original finding had no evidentiary support in the record. It may not have been wise for Employer to appeal the lack of evidence supporting the original award of attorney's fees, but having now prevailed on that issue, they should be bound by the Appellate Panel's factual finding.

CONCLUSION

For the foregoing reasons, Appellant requests that this Court (1) reverse the Appellate Panel's application of the law of the case doctrine; and (2) order Respondents to pay attorney's fees and costs based on the Appellate Panel's factual finding that "The total of attorney's fees and costs involved in enforcing the Order is \$6,407.50."

Respectfully submitted,



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December 30, 2013

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission

Susan S. Barden, Melody L. James and Avery B. Wilkerson, Jr., Commissioners

WCC File No. 0902416

John Hart, Employee, Appellant,

v.

Owen Steel Company, Employer, and Old Republic Insurance Company, Carrier,
..... Respondents.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Appellant complies with Rule 211(b), SCACR.

Respectfully submitted,



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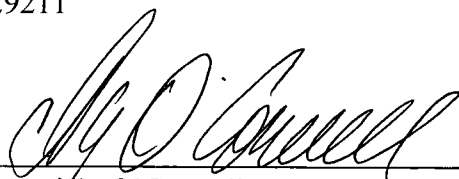
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Owen Steel Company, Employer, and Old Republic Insurance Company, Carrier,
..... Respondents.

PROOF OF SERVICE

I certify that I am the paralegal to Stephen B. Samuels and I have served the **Final Brief of Appellant** upon the Respondents by mailing a copy of the same in the United States mail, with sufficient postage affixed thereto and return address clearly marked on **December 30, 2013**, addressed as follows:

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December 30, 2013