

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM SOUTH CAROLINA WORKERS COMPENSATION COMMISSION

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APPELLATE CASE NO. 2013-001564

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**RECEIVED**

JAN 30 2014

**SC Court of Appeals**

WILLIAM E MILLER, JR., EMPLOYEE, CLAIMANT, APPELLANT,

v.

OWEN STEEL COMPANY INC. EMPLOYER AND GREAT AMERICAN INSURANCE  
GROUP C/O STRATEGIC COMP SERVICES, CARRIER, RESPONDENTS.

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**RETURN TO RESPONDENTS' MOTION TO STRIKE**

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Respondent has filed a Motion to Strike a portion of Appellant's Reply Brief and remove a portion of its Designated Matters for the Record on Appeal. Such motion is based mostly on a reply to a portion of the Respondents' Initial Brief which indicated that the Commissioner and/or the Panel considered testimony relating to items set forth in a medical record on a visit after the actual surgery of Mr. Miller (Appellant). The second issue appears to be related to the verbiage used in Appellant's designation in the record that stated "proposed APA exhibits."

A. There Are No APA Submissions by the Parties in the Record which were not Allowed or Stipulated in the Record.

Taking the second issue first, it appears Respondents are concerned that there are or were proposed APA submissions designated by Appellant for inclusion in the Record on Appeal which were excluded by the Commissioner. There are no such documents included and there were no Proposed APA submissions not included in the record by the Commissioner. As parties propose APA submissions to the Commissioner at hearing, that was the term used in our Designation entry. Appellant will change the language used in his Designation for the APA items reviewed by the Commissioner to state APA Submissions. (See: Hearing Transcript)

B. The Motion to Supplement the APA Record was Introduced into the Designation of Materials to be Included in the Record on Appeal After the Respondents Argued that the Disputed Medical Records Factual Statements (ie. Use of "Jackhammer") Were Considered by the Hearing Commissioner and the Panel.

The Appellant did not include the Appellant/Claimant's Motion to Supplement the Record with the corrected medical records in his initial Designation to be included in the Record on Appeal because there was no mention of this issue or the disputed testimony in the hearing Commissioner's Order or the Panel Order. As set forth in Appellant's Reply Brief, the Motion was made by the Claimant prior to the Commissioner making his determination. The Order did not in any way rely on or mention the disputed testimony related to the "jackhammer" so Claimant had no reason to take the matter up to the Panel. The Employer/carrier did not bring this issue up in their Brief to the Appellate Panel (Brief) or during their oral argument. (Panel

Argument Transcript)

The Respondents, however, in their Initial Response Brief cited this testimony as additional record evidence of untruthfulness used by the Commission to determine Claimant's lack of credibility. Appellant, responding in its Reply Brief, argued that this particular factual testimony related to what was stated in the medical records and was not cited or considered by either the Hearing Commissioner or the Panel. Appellant, in his Reply Brief, added the fact of the Motion to Supplement with the proffered evidence of the corrected records by the medical provider. The Commissioner reviewed the Motion and attachments. Had the Hearing Commissioner cited this factual dispute as evidence of lack of credibility in the Order, the Claimant would have appealed the denial of the supplemental entry to the Panel. The relevance of the Motion to Supplement to the Hearing Commissioner is not a retroactive attempt to appeal the issue of whether the Commissioner should have allowed the supplement but is additional information reviewed by the Commissioner which would provide context and complete information as to what was in front of the Commissioner and Commission prior to the Hearing Commissioner's Order. This Motion with proffered documents may have assisted the Commissioner in considering that this testimony should not be used to determine Claimant's credibility in his Order.<sup>1</sup>

The Motion with the proffered evidence was and is part of the administrative file and record and was cited in the Reply by Appellant solely to demonstrate that such motion was made

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<sup>1</sup> The Commissioner certainly have also considered other issues demonstrating that the medical information used to impeach Mr. and Ms. Miller made little sense as Mr. Miller would have had to be using a jackhammer a week after his surgery and during this bed rest recovery.

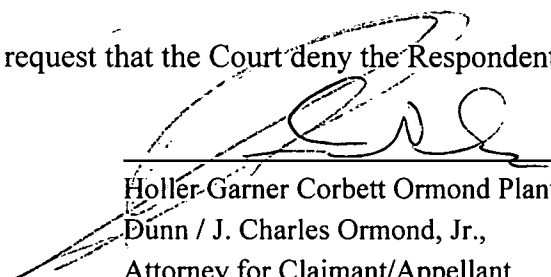
prior to the Commissioner's Order and subsequent Panel Order, neither of which included any finding that Claimant was untruthful as to this specific testimony. Despite the fact that neither the Panel Order (Final Administrative Order) or the Hearing Commissioner Order indicated a finding that Claimant was untruthful on this matter, the Respondents argued this testimony in their Brief. The fact that the Motion with the proffered medical records was filed and reviewed by the Commissioner may well have assisted the Commissioner in his determination not to consider this specific issue despite his Commissioner's decision not to allow the supplement.

SUMMARY:

Appellant has not provided proposed submissions declined by the Commissioner for the Record on Appeal and the term proposed will be taken from the description of the documents within the APA submissions. The inclusion of the Claimant's Motion to Supplement with proffered records was not included in the initial designation because it was not an issue in the Panel Argument and neither Order mentioned or expressly relied on the testimony related to the "jackhammer." Respondent then cited this testimony in their Initial Brief. Appellant, in Reply, seeks to provide the full record to the Court as it relates to this specific testimony and issue.

WHEREFORE: The Appellant would respectfully request that the Court deny the Respondent's Motion to Strike.

January 28, 2014



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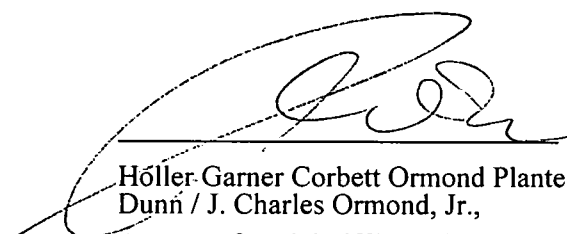
PROOF OF SERVICE

I certify that I have served a copy of the APPELLANT'S RETURN TO RESPONDENTS' MOTION TO STRIKE on Respondents (Great American Insurance Group c/o Strategic Comp. Services, by U. S. MAIL (FIRST CLASS), on January 28, 2014, its/their attorney/s of record, Helen Hiser, Esq., Weston Adams, III, Jason Lockhart McAngus Goudelock & Courie, LLC, P.O. Box 12519, Columbia, SC 29211. Meridian Building, Columbia, SC. 29201.

January 28, 2016

Service completed:

Angie Thompson



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