

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

APPEAL FROM LEXINGTON COUNTY  
COURT OF COMMON PLEAS

Thomas A. Russo, Circuit Court Judge

Case No.: 2013-002491

Alexander Guice, .....Appellant,

V.

US Foodservice, Inc., and Ace American Insurance Co.  
c/o Gallagher Bassett Service, Inc.,.....Respondents’.

**RECEIVED**

FEB 03 2014

**SC Court of Appeals**

INITIAL BRIEF OF APPELLANT

**PLEASE TAKE NOTICE** that ALEXANDER GUICE, the APPELLANT, proclaims the pleadings in this case are being filed by Appellant in *Propria Persona*, wherein pleadings are to be considered without regard to technicalities. In *Propria*, pleadings are not to be held to the same high standards of perfection as practicing lawyers. See Haines v. Kerner 92 Sct 594, also See Power 914 F2d 1459 (11<sup>th</sup> Cir1990), also See Hulsey v. Ownes 63 F3d 354\_(5th Cir 1995). Also See In Re: HALL v. BELLMON 935 F.2d 1106 (10th Cir. 1991). Appellant challenges the ‘Order Granting Defendants’ Motion to Dismiss’ dated June 10, 2013 by the Honorable Thomas A. Russo, and as such, Appellant seeks the Court, pursuant to the *South Carolina Appellate Court Rules* and section 1-23-380 (6) of the *code of laws of South Carolina* (2008 annotated), to

REVERSE in part and MODIFY in part the same, by OPERATION OF LAW, and Appellant seeks the following REMEDIES, to include, but not limited to, the following:

A. That the Court Reverse the “Order Granting Defendants’ Motion to Dismiss” dated June 10, 2013 by setting aside the same WITH PREJUDICE;

B. That the Court Modify the “Order Granting Defendants’ Motion to Dismiss” dated June 10, 2013 by setting aside the Decision dated March 27, 2013 by Gary M. Cannon, Executive Director of S.C. Workers’ Compensation Commission in regards to W.C.C. Case No. 0506205 WITH PREJUDICE;

C. That the Court Modify the “Order Granting Defendants’ Motion to Dismiss” dated June 10, 2013 by setting aside the ‘Settlement Agreement and Release’ dated January 5, 2006 by Commissioner David W. Huffstetler of S.C. Workers’ Compensation Commission in regards to W.C.C. Case No. 0506205 WITH PREJUDICE;

D. That the Court Modify the “Order Granting Defendants’ Motion to Dismiss” dated June 10, 2013 by Ordering the Respondent to immediately COMPLY with SC Code 42-9-260(F) (1996 annotated) and SC Regulation 67-506(D) (1997 annotated) and release withheld temporary total compensation payments to the Appellant, at the average weekly wage of \$1,161.00 per week, effective November 2, 2005 to date;

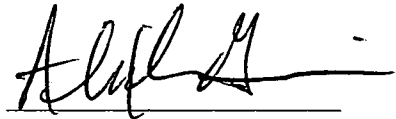
E. That the Court Modify the “Order Granting Defendants’ Motion to Dismiss” dated June 10, 2013 by Ordering the Respondent to COMPLY with SC Regulation 67-506(D) (1997 annotated) and immediately reinstate the Appellant’s employment, effective November 2, 2005;

F. That the Court Modify the “Order Granting Defendants’ Motion to Dismiss” dated June 10, 2013 by Ordering the Respondent to COMPLY with SC Code 42-9-260

(G) (1996 annotated) and immediately pay the 25% penalty on the withheld temporary total compensation payments to Appellant; and

**G.** For any and such other remedies this Court deems just and proper.

January 31, 2014



Alexander Guice  
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Appellant *pro se*

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STATEMENT OF ISSUES ON APPEAL

1. SHALL THE COURT REVERSE THE ORDER OF THE LOWER COURT BASED ON THE CLEARLY ERRONEOUS GROUNDS ASSERTED TO GRANT THE MOTION TO DISMISS?

2. SHALL THE COURT MODIFY THE ORDER OF THE LOWER COURT BY SETTING ASIDE THE DECISION OF THE EXECUTIVE DIRECTOR OF THE WORKERS' COMPENSATION COMMISSION BASED ON THE CLEAR EXCESS OF STATUTORY AUTHORITY AND UNWARRANTED EXERCISE OF DISCRETION BY THE EXECUTIVE DIRECTOR?

3. SHALL THE COURT MODIFY THE ORDER OF THE LOWER COURT BY SETTING ASIDE THE SETTLEMENT AGREEMENT AND RELEASE BASED ON THE CLEAR VIOLATION OF STATUTORY PROVISIONS BY THE WORKERS' COMPENSATION COMMISSION?

4. SHALL THE COURT MODIFY THE ORDER OF THE LOWER COURT BY ORDERING THE RESPONDENTS' TO IMMEDIATELY COMPLY WITH SC 42-9-260(F) AND SC REGULATION 67-506(D) AND RELEASE TEMPORARY TOTAL COMPENSATION PAYMENTS BY OPERATION OF LAW?

5. SHALL THE COURT MODIFY THE ORDER OF THE LOWER COURT BY ORDERING THE RESPONDENTS' TO COMPLY WITH SC 42-1-620 AND SC REGULATION 67-506(D) AND IMMEDIATELY REINSTATE APPELLANT'S EMPLOYMENT EFFECTIVE NOVEMBER 2, 2005 BY OPERATION OF LAW?

6. SHALL THE COURT MODIFY THE ORDER OF THE LOWER COURT ORDERING THE RESPONDENTS' TO COMPLY WITH SC CODE 42-9-260

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#### STATEMENT OF THE CASE

The Appellant sustained injuries to the Appellant's low back, right knee, and neck by accident arising out of and in the course and scope of employment with Respondents' on May 5, 2005, when Appellant was involved in a motor vehicle accident. At the time of the accident, Appellant's average weekly wage was \$1,161.00. Appellant was treated by the Respondents' selected treating physician, Dr. Alan Tamadon (Dr. Tamadon).

On or around May 11, 2005 the Appellant retained the law firm of Harry Pavilack and Associates and Robert G. Bacon, Esq. (Representative Bacon) to represent the Appellant with regards to the work-related injury.

On October 27, 2005 Dr. Tamadon; (1) opined maximum medical improvement (MMI); (2) assigned a 5% medical impairment rating to the whole person of the Appellant; (3) opined permanent lifting restrictions; and (4) reported to the respondents' that Appellant was unable to return to work at the same or other similar job. When Dr. Tamadon opined MMI on October 27, 2005 the Appellant had received temporary compensation payments from Respondents' for approximately 175 days, after and including the first 150 days. The parties never challenged or disputed the medical opinion or rationale of Dr. Tamadon.

The Respondents' verbally discharged the Appellant on or around November 2, 2005 on the grounds of "permanent lifting restrictions" and "no position available". The Respondents' never offered or afforded the Appellant suitable employment to accommodate the Appellant's incapacity prior to verbally discharging the Appellant. The

Appellant never refused suitable employment to accommodate the Appellant's incapacity, because no suitable employment was ever offered by the Respondents'.

The Respondents' failed to provide the Appellant with a written notice of the discharge. Appellant immediately informed Representative Bacon that the Respondents' discharged the Appellant; however Representative Bacon took no action on behalf of the Appellant to protect the Appellant's right to continued employment. The Respondents' terminated all payments to the Appellant following the discharge of the Appellant.

Appellant informed Representative Bacon that Appellant was not receiving any payments of any kind; however Representative Bacon took no action on behalf of the Appellant to protect Appellant's entitled right to continued compensation payments. At no time prior to terminating the Appellant's compensation payments did the Respondent request a hearing or receive permission from the Commission to reduce or terminate compensation payments to the Appellant.

On or around November 6, 2005 following the discharge of the Appellant, the Respondents' reduced the Appellant's compensation rate from \$1,161.00 to \$592.56, the maximum compensation rate in 2005. The Commission failed to perform its statutory responsibilities by ensuring the Respondents' actions with regards to discharging the Appellant and reducing the Appellant's average weekly wage was in accordance with the South Carolina Workers' Compensation Act (Act). On or around December 22, 2005 and under the advisement of Representative Bacon, and without any compensation payments received since being verbally discharged, the Appellant entered into a Settlement Agreement and Release or "clincher" with the Respondents' for \$20,000.00.

After Appellant entered into the clincher on December 22, 2005 Appellant

received an envelope from the Respondent containing three (3) compensation payment checks from on around November 2, 2005 to December 4, 2005. The clincher was approved by Commissioner David W. Huffstetler on January 5, 2006. Following the approval of the clincher, the Appellant received a check for \$13,333.33, as Representative Bacon received one third (1/3) of Appellant's clincher amount, or \$6,666.66.

The Appellant never attended a hearing, formal conference, or informal conference before the Commission, prior to, or anytime following, the approval of the clincher. Representative Bacon continued to represent the Appellant from on or around May 11, 2005 to on or around October 28, 2012. Appellant had an extreme novice understanding of the Act, as well as the civil and legal rights afforded to the Appellant, and relied heavily on the guidance and advisement of Representative Bacon in all actions and decisions made by the Appellant. On October 28, 2012 the Appellant relieved Representative Bacon of his duties as the representative for the Appellant. On December 7, 2012 Appellant filed a Form 50/Hearing Request.

Appellant filed a Form 20/Subpoena upon the Respondent requesting a copy of the Appellant's employment file. On or around December 7, 2012 Appellant filed a Form 20/Subpoena upon former Representative Bacon requesting a copy of the Appellant's client file to ascertain what actions, if any, did Representative Bacon take on the Appellant's behalf; however to date, former Representative Bacon has failed to comply with the Form 20 Subpoena and provide the Appellant a copy of the client file. On or around December 21, 2012 the Respondent complied with the Appellant's Form 20 Subpoena, and upon review of the requested Appellant's employment file, the Appellant received a copy of the discharge notice from November 2, 2005.

Appellant filed an Amended Form 50/Hearing Request on January 5, 2013 under the same Workers' Compensation Commission file number, 0506205. Respondents' timely filed a Form 51 and Amended Form 51, respectively, denying any entitlement to additional medical care or treatment, temporary total compensation payments, based upon the parties' previous Settlement Agreement and Release approved by the Commission on January 5, 2006. Appellant received a Notice of Hearing from the Commission dated January 29, 2013. The Notice of Hearing scheduled a hearing in this matter for March 28, 2013 in Summerville, South Carolina and assigned Commissioner Susan S. Barden (Commissioner Barden) as the presiding Commissioner.

The Notice of Hearing improperly listed the Respondents' address as 125 Fort Mill Parkway, Fort Mill, SC 29715 and placed the case for adjudication in the jurisdiction of 'District 4 (CHARLESTON)'. At the time the hearing was scheduled, Commissioner Barden was within the jurisdictional authority of "District 2 (ANDERSON)". Commissioner Barden was not scheduled to rotate into the jurisdictional authority of District 4 until March 1, 2013. On February 3, 2013 Appellant filed a 'Motion For Transfer of Jurisdiction' with the Commission, seeking the Commission to transfer jurisdiction of the case from District 4 to District 7 (RICHLAND), based on the Respondents' proper address of 120 Longs Pond Road, Lexington, SC 29072.

On February 13, 2013 Respondents' filed a 'Defendants' Reply to Claimant's Motion for Transfer of Jurisdiction' wherein the Respondents' mutually agreed that the Respondents' proper address in the matter of WCC # 0506205 was 120 Longs Pond Road, Lexington, SC and did not object to the transfer of jurisdiction and the issuance of a reset Hearing Notice by the Commission. On February 22, 2013, and while still within

the jurisdictional authority of District 2, Commissioner Barden issued an Order cancelling the previously scheduled March 28, 2013 hearing in this matter, on the grounds that Appellant settled his claim through a Final Settlement Agreement. In the Order dated February 22, 2013 Commissioner Barden also dismissed all motions filed by the parties in this matter.

On February 28, 2013 Appellant filed a Form 30/Request For Commission Review, seeking to challenge the Order of Commissioner Barden. On March 4, 2013 Appellant filed a "Motion for Reinstatement of Employment and Release of Temporary Total Compensation Payments", wherein Appellant asserted that the Respondents' unlawfully terminated the Appellant's entitled compensation payments, and Respondent unlawfully discharged Appellant's employment with the Respondents'. Appellant properly asserted the SC Regulation 67-506(D) and the like in support of Appellant's position.

On March 14, 2013 Respondents' filed a 'Reply to Claimant's Motion for Reinstatement of Employment and Release of Temporary Total Compensation Payments. However, the Respondents' failed to "affirm or deny the averments contained in Appellants' motion dated March 4, 2013. On March 17, 2013 Appellant filed an 'Answer to Defendants' Reply to Claimant's Motion for Reinstatement of Employment and Release of Temporary Total Compensation Payments' wherein Appellant asserted that the Appellant's averments contained in the Motion dated March 4, 2013 were admitted pursuant to the failure of Respondents' Attorney, namely, Representative Hantske to comply with Rule 8(b) SCRCF IAW Rule 8(d) SCRCF.

On March 18, 2013 Appellant filed a 'proposed Order Granting Claimant's

Motion for Reinstatement of Employment and Release of Temporary Total Compensation Payments'. On March 27, 2013 Gary M. Cannon, Executive Director of the Workers' Compensation Commission issued a Decision erroneously returning the Appellant's Motion for Reinstatement of Employment and Release of Temporary Total Compensation Payments, without the motion being adjudicated by the Workers' Compensation Commission, on the grounds that the "Commission does not have subject matter jurisdiction for the issues set forth in the Motion."

The decision by Mr. Cannon of the Commission was clearly an abuse of authority and clearly erroneous, due to the fact, that only "commissioners shall hear and determine all contested case before the commission" pursuant to SC Code 42-3-20(C) (2007). Mr. Cannon's decision prejudiced the Appellant, and has allowed the Respondents' to continue willfully violating SC Code 42-9-260(F), SC Regulation 67-506(D). Appellant appealed Mr. Cannon's decision with Lexington Court of Common Pleas. The Respondent filed a 'motion to dismiss' on the grounds that the Appellant has failed to exhaust administrative remedies within the Workers' Compensation Commission, which was erroneously granted by the lower court.

There are no administrative remedies that can be taken by a party, to appeal a decision of the executive director of the commission, under the South Carolina Workers' Compensation Act, and as such, the lower court's grounds for dismissing this action was erroneous and arbitrary and capricious in nature. The Respondents' continues to be in willful violation of the law. Taken in aggregate, the Appellant's entitled right to compensation and employment has been, and continues to be, egregiously violated by the Respondents' and the Workers' Compensation Commission, and the same has been exacerbated by the unlawful Order of the lower court.

## FACTS

1. On October 1, 2001 Appellant was hired as a delivery driver by US Foodservice, Inc. (Respondent), located at 120 Longs Pond Road, Lexington, SC 29072. The parties are bound by the authority of the South Carolina Workers' Compensation Act IAW SC Code 42-1-310. On May 5, 2005 the Appellant was injured in an admitted motor vehicle accident in the course and scope of employment with Respondents'. Appellant notified Respondents' of the accident/injury on May 5, 2005. Appellant reported injuries to Appellant's neck, lower back, and right knee, and head. At the time of injury the parties agreed that the average weekly wage of the Appellant was \$1,161.00 (Rec.).

2. Appellant's work-related injuries was treated by Alan Tamadon, MD (Dr. Tamadon), the Respondent-selected authorized treating physician. Appellant reported to all medical appointments as directed. On October 27, 2005 Dr. Tamadon opined maximum medical improvement (MMI) and reported to the Respondents' that the Appellant incurred a 5% impairment rating to the whole person, incurred permanent lifting restrictions, and was unable to return to work at the same or other suitable job (Rec.).

3. On October 27, 2005 when Dr. Tamadon opined MMI and reported to the Respondents' that the Appellant was unable to return to work at the same or other suitable job, the Appellant had received temporary compensation payments from May 6, 2005 to October 27, 2005 for a total of 175 days, including and after the first 150 days (Rec.).

4. On or around November 2, 2005 the Respondent verbally discharged the

Appellant on the grounds of permanent lifting restrictions and no position available. The Respondent never offered or afforded suitable employment to accommodate the incapacity of the Appellant prior to the verbal discharge (Rec. ).

5. Following the verbal discharge of the Appellant by the Respondent, on or around November 6, 2005 the Respondents' representative arbitrarily reduced the Appellant's average weekly wage from 1,161.00 to \$592.56 (Rec. ).

6. Appellant entered into a Settlement Agreement and Release or 'Clincher' with Respondent to settle WCC# 0506205 for \$20,000.00 on December 22, 2005 and the clincher was approved by Commissioner David W. Huffstetler (Commissioner Huffstetler) on January 5, 2006 (Rec. ).

7. No stop payment of compensation hearing, formal conference, or informal conference was ever convened by the Commission prior to, or anytime following, the parties entering into the clincher.

8. On December 7, 2012 Appellant filed a Form 50/Request for hearing. On January 5, 2012 Appellant filed an Amended Form 50/Request for hearing. *Inter Alia* the Appellant sought immediate payment of withheld temporary total compensation payments, at the average weekly wage of \$1, 161.00 effective November 2, 2005 to date; Reinstatement of employment with the Respondent effective November 2, 2005; and payment of the 25% penalty on withheld compensation payments (Contained in the File).

9. On December 27, 2012 and January 14, 2012 respectively, Respondents' filed a Form 51 and an Amended Form 51. On both Form 51's/Employer's Answer to Request for Hearing, the Respondent denied the Appellant's request for temporary total compensation and the like, on the grounds that "...he (Appellant) entered into a clincher

settlement agreement to resolve his claim related to his accident of May 5, 2005...”

(Contained in the File).

10. On January 29, 2013 the Commission issued a Notice of Hearing scheduling a hearing in the matter of WCC # 0506205 for March 28, 2013 in Summerville, South Carolina within the Commission’s jurisdictional authority of District 4. The presiding commissioner named on the Notice of Hearing to preside over the hearing was Commissioner Susan S. Barden (Commissioner Barden). The Notice of Hearing listed the address of the employer as “125 Fort Mill Parkway Fort Mill, SC 29715” (Contained in the File).

11. On February 3, 2013 Appellant filed a ‘Motion for Transfer of Jurisdiction’ seeking to transfer jurisdiction of WCC # 0506205 from District 4 (CHARLESTON) to District 7 (LEXINGTON) based on the proper address of the employer, namely, 120 Longs Pond Road Lexington, SC 29072 (Contained in the File).

12. On February 13, 2013 Respondent filed a ‘Defendants’ Answer to Claimant’s Motion for Transfer of Jurisdiction’ wherein Respondent mutually agreed that the employer’s proper address in the matter of WCC # 0506205 was 120 Longs Pond Road Lexington, SC and did not object to the transfer of jurisdiction from District 4 to District 7 and the issuance by the Commission of a reset Hearing Notice (Contained in the File).

13. On February 22, 2013 Commissioner Barden, while in the WCC jurisdictional authority of District 2 (ANDERSON) issued an Order wherein Commissioner Barden cancelled the March 28, 2013 hearing and dismissed any and all motions related to WCC # 0506205 on the grounds that the Appellant settled his claim by the Settlement Agreement and Release (Contained in the File).

14. On February 28, 2013 Appellant filed a Form 30 to request a review of the commissioner's decision (Contained in the File).
15. On March 4, 2013 Appellant filed a 'Motion for Reinstatement of Employment and Release of Temporary Total Compensation Payments (Contained in the File).
16. On March 14, 2013 Respondents' filed an 'Reply' to Appellant's Motion for Reinstatement dated March 4, 2013 (Contained in the File).
17. On March 17, 2013 Appellant filed a 'Answer' to Respondents' 'Reply' (Contained in the File).
18. On March 18, 2013 Appellant filed a proposed Order Granting Claimant's Motion for Reinstatement of Employment and Release of Temporary Total Compensation Payments (Contained in the File).
19. On March 27, 2013 Executive Director Gary M. Cannon of the Commission issued a Decision summarily dismissing the Appellant's Motion for Reinstatement of Employment (Rec. ).
20. On or around April 11, 2013 Appellant filed a 'Complaint' with the lower court (Contained in the File).
21. On or around May 2, 2013 Respondents' filed a 'Motion to Dismiss' (Contained in the File).
22. On or around June 10, 2013 the lower court issued an 'Order Granting Defendants' Motion to Dismiss' (Rec. ).
23. Appellant filed a Motion to reconsider which was denied by the lower court on or around September 6, 2013 (Contained in the File).

## ARGUMENT

1. BECAUSE MR. CANNON LACKED THE AUTHORITY TO RENDER A DECISION REGARDING A CONTESTED CASE BEFORE THE COMMISSON AND THERE ARE NO ADMINISTRATIVE REMEDIES TO APPEAL A DECISION FROM THE EXECUTIVE DIRECTOR OF THE COMMISSION, THE ORDER OF THE LOWER MUST BE REVERSED.

The decision dated March 27, 2013 and issued by Mr. Cannon, the Executive Director of the Commission was clearly erroneous because Mr. Cannon does not have the authority to render decision regarding contested cases before the commission pursuant to SC Code 42-3-20(C). Furthermore, the South Carolina Workers' Compensation Act does not provide a provision for a party to challenge or otherwise appeal a decision rendered by the executive director of the commission. The rationale of the lower court to grant the motion to dismiss, as stated, "The Claimant in the above-referenced case has failed to exhaust all administrative remedies within the workers' compensation forum prior to initiating this appeal in the Court of Common Pleas" is clearly erroneous.

SC Code 1-23-380(6)(a) & (e) affords the Court to reverse the order when the Appellant is prejudiced by the Order and the same is "*in violation of constitutional or statutory provisions*" and "*clearly erroneous...*". As such, the court must reverse the Order of the lower court by setting aside the same with prejudice.

2. BECAUSE THE DECISION RENDERED BY MR. CANNON OF THE COMMISSON EXCEEDED THE AUTHORITY OF THE OFFICE OF THE EXECUTIVE DIRECTOR OF THE COMMISSION AND PREJUDICED THE APPELLANT, THE ORDER OF THE LOWER COURT MUST BE MODIFIED TO

SET ASIDE THE MARCH 27, 2013 DECISION BY MR. CANNON WITH PREJUDICE.

As previously stated, Mr. Cannon's decision dated March 27, 2013 was unlawful, clearly erroneous, in excess of the authority of the executive director's duties and responsibilities (SC Code 42-3-80), and prejudiced the Appellant. SC Code 1-23-380(6)(a) & (e) affords the Court the ability to modify the order when the Appellant is prejudiced by the Order and the same is "*in violation of constitutional or statutory provisions*", "*in excess of the statutory authority*" and "*clearly erroneous...*". As such, the Court must modify the Order of the lower court by setting aside the decision of Mr. Cannon dated March 27, 2013 with prejudice.

3. BECAUSE THE SETTLEMENT AGREEMENT AND RELEASE ENTERED INTO BY THE PARTIES WAS IN VIOLATION OF STATUTORY PROVISIONS CONTAINED IN SC CODE 42-1-610, SC CODE 42-1-620, SC CODE 42-9-260 (F) AND SC REGULATION 67-506(D) & (E) THE ORDER OF THE LOWER COURT MUST BE MODIFIED BY SETTING ASIDE THE SETTLEMENT AGREEMENT AND RELEASE AS A MATTER OF LAW.

The parties entered into a Settlement Agreement and Release which was approved by Commissioner David W. Huffstetler of the Commission on January 5, 2006 (Contained in the File). However, a review of the record confirms that; (A) the treating physician reported to the Respondent that the Appellant was unable to return to work at the same or similar duties; (B) opined MMI and a 5 percent impairment rating; and (C) opined permanent lifting restrictions.

The Appellant received temporary compensation payments for 213 continuous days, including the first 150 days (Rec. ). A further review of the record confirms that

no hearing of any kind, to include a stop payment hearing, has ever been convened in this matter. As it relates to the statutory duties of the employer's representative with respect to paying compensation payments to an injured worker after the first 150 days of continuous compensation payments, SC Code 42-9-260 (F) states in relevant part,

*After the one-hundred-fifty-day period has expired, the commission shall provide by regulation the method and procedure by which benefits may be suspended or terminated for any cause, but the regulation must provide for an evidentiary hearing and commission approval prior to termination...*

Furthermore, SC Code 42-1-620 states, "No agreement by an employee to waive his rights to compensation under this Title shall be valid."

SC Code 1-23-380(6)(a) & (e) affords the Court the ability to modify the order when the Appellant is prejudiced by the Order and the same is "in violation of constitutional or statutory provisions", "in excess of the statutory authority" and "clearly erroneous...". As such, the Court must modify the Order of the lower court by setting aside the Settlement Agreement and Release dated January 5, 2006 with prejudice.

4. BECAUSE THE RESPONDENTS' UNLAWFULLY TERMINATED COMPENSATION PAYMENTS TO THE APPELLANT IN VIOLATION OF SC CODE 42-9-260(F) AND SC REGULATION 67-506(D) THE ORDER OF THE LOWER COURT MUST BE MODIFIED BY ORDERING THE RESPONDENTS' TO IMMEDIATELY RELEASE WITHHELD COMPENSATION PAYMENTS TO THE APPELLANT AS A MATTER OF LAW.

As previously stated, the Respondents' unlawfully terminated compensation payments to the Appellant on the grounds that the Appellant entered into a Settlement

Agreement and Release, which is not lawful pursuant to SC Code 42-1-610, SC Code 42-1-620 and SC Regulation 67-506(D). A hearing must be convened, and the Commission must grant permission before the Respondents' Representative can reduce or terminate compensation payments.

SC Code 1-23-380(6)(a) & (e) affords the Court the ability to modify the order when the Appellant is prejudiced by the Order and the same is "*in violation of constitutional or statutory provisions*", "*in excess of the statutory authority*" and "*clearly erroneous...*". As such, the Court must modify the Order of the lower court by ordering the Respondents' Representative to immediately release the unlawfully withheld compensation payments to the Appellant as a matter of law.

5. BECAUSE THE RESPONDENTS' DISCHARGED THE APPELLANT ON THE UNLAWFUL GROUNDS OF 'PERMANENT LIFTING RESTRICTIONS' AND 'NO POSITION AVAILABLE' WHEREIN THE PERMANENT LIFTING RESTRICTIONS WERE A DIRECT RESULT OF THE INJURIES SUSTAINED IN THE ADMITTED WORK RELATED INJURY AND THE RESPONDENTS' NEVER OFFERED SUITABLE EMPLOYMENT TO ACCOMMODATE THE APPELLANT'S INCAPACITY, THE ORDER OF THE LOWER COURT MUST BE MODIFIED TO ORDER THE RESPONDENTS' TO IMMEDIATELY REINSTATE THE APPELLANT'S EMPLOYMENT.

Following the authorized treating physicians findings being released to the Respondents' on October 27, 2005, the Respondents' unlawfully discharged the Appellant on November 2, 2005 (Rec. ). The grounds to substantiate the discharge of the Appellant, namely, "permanent lifting restrictions" and "no position available" were

unlawful. There is no provision, or law which affords an employer to discharge an injured worker when the injuries sustained were a direct result of an admitted work related injury, particularly when no suitable job was afforded or offered to the injured worker, and when the injured worker never refused suitable employment.

Furthermore, the Appellant's employment was protected by the Act. SC Regulation 67-506(D) states,

*After the one hundred fifty day period, when the claimant is receiving temporary compensation and the authorized health care provider assigns an impairment rating and reports the claimant is unable to return to work at the same or other suitable job, the employer's representative must continue payment of temporary compensation until the Commission finds the employer's representative may terminate temporary compensation.*

SC Code 1-23-380(6)(a) & (e) affords the Court the ability to modify the order when the Appellant is prejudiced by the Order and the same is "*in violation of constitutional or statutory provisions*", "*in excess of the statutory authority*" and "*clearly erroneous...*". As such, the Court must modify the Order of the lower court by ordering the Respondents' to immediately reinstate the employment of the Appellant as a matter of law.

6. BECAUSE THE RESPONDENT HAS FAILED TO PAY COMPENSATION AS REQUIRED BY LAW, THE ORDER OF THE LOWER COURT MUST BE MODIFIED TO ORDER THE RESPONDENTS' REPRESENTATIVE TO PAY THE 25% PENALTY ON THE WITHHELD COMPENSATION PAYMENTS.

As previously stated, and confirmed by a review of the whole record, the Respondents' has failed to lawfully pay compensation to the Appellant IAW 42-9-260(F)

and SC Regulation 67-506(D). As it relates to the failure of the Respondent to lawfully pay compensation, SC Code 42-9-260(G) states,

*Failure to comply with this section shall result in a twenty-five percent penalty imposed upon the carrier or employer computed on the amount of benefits withheld in violation of this section, and the amount of the penalty must be paid to the employee in addition to the amount of benefits withheld. However, the penalty does not apply if the employer or carrier has terminated or suspended benefits when the employee has returned to any employment at the same or similar wage.*

The Appellant has been unemployed since being unlawfully terminated by the Respondents' on November 2, 2005.

Based on the unlawful termination of compensation payments by the Respondents' Representative, the Court must modify the Order of the lower court by ordering the Respondents' to immediately pay the 25% penalty on the unlawfully withheld compensation payments to the Appellant as a matter of law.

#### CONCLUSION

Based on the reasons stated, the Appellate Court should;

- a. Reverse the "Order Granting Defendants' Motion to Dismiss" by setting aside the same with prejudice;
- b. Modify the "Order Granting Defendants' Motion to Dismiss" by setting aside the decision of Gary M. Cannon of the Commission dated March 27, 2013 with prejudice;
- c. Modify the "Order Granting Defendants' Motion to Dismiss" by setting aside the Settlement Agreement and Release dated January 5, 2006 and approved by Commissioner David W. Huffstetler with prejudice;
- d. Modify the "Order Granting Defendants' Motion to Dismiss" by ordering

the Respondents' Representative to immediately release unlawfully withheld temporary total compensation payments, at the average weekly wage of \$1, 161.00 effective November 2, 2005 to date;

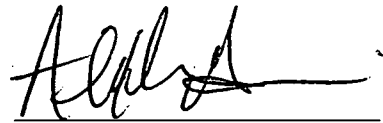
e. Modify the "Order Granting Defendants' Motion to Dismiss" by ordering the Respondents' to immediately reinstate the employment of the Appellant effective November 2, 2005;

f. Modify the "Order Granting Defendants' Motion to Dismiss" by ordering the Respondents' Representative to immediately pay the 25% penalty on the unlawfully withheld compensation payments; and

g. For any such other remedies this Court deems just and proper.

January 31, 2014  
Tampa, Florida

Respectfully submitted,



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