

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM THE  
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

71563

Appellate Panel  
T. Scott Beck, Commissioner

WCC File No. 1103604

Michael Philip Worthen,  
Employee, Claimant,

Appellant,

v.

Laurens County, Employer,  
And SC Association of  
Counties SIF, Carrier,  
Defendants

Respondents.

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MAR 13 2014

SC Court of Appeals

**NOTICE OF MOTION AND MOTION TO REINSTATE THE APPEAL**

TO: RESPONDENTS ABOVE NAMED AND THEIR COUNSEL

PLEASE TAKE NOTICE THAT Appellant, Michael Philip Worthen, has moved the South Carolina Court of Appeals, pursuant to Rules 240 and 269(a) of the South Carolina Appellate Court Rules to Reinstate the Appeal. This motion is based on the facts and arguments presented below.

**STATEMENT OF FACTS**

This is a workers' compensation case, in which Appellant alleges he suffered a heart attack that was a work-related compensable injury arising out of and in the

course of his employment with Respondent Employer, Laurens County, on February 26, 2011. Appellant filed and served a Notice of Appeal on July 9, 2013, requesting this Court to review a Decision and Order of the South Carolina Workers' Compensation Commission Appellate Panel filed on June 14, 2013, reversing the Order of the Single Commissioner and denying Appellant's claim for benefits under the South Carolina Workers' Compensation Act. (See generally Commission's Order, pp. 1-14).

Appellant timely filed and served his Initial Brief of Appellant and Appellant's Designation of Matter to be Included in the Record on Appeal on September 16, 2013. On September 24, 2013, Respondent moved, with Appellant's consent, for an extension of time to file and serve the Initial Brief of Respondent and Respondent's Designation of Matter to be Included in the Record on Appeal. The Honorable Clerk of Court issued an Order granting Respondent's motion on September 9, 2013. Respondents filed their Initial Brief and Designation on November 8, 2013. Following a letter from the Honorable Deputy Clerk of Court noting certain deficiencies in Respondents' filing, Respondents filed a corrected title page to their Initial Brief and Designation on November 26, 2013.

Rule 210(a) of the South Carolina Appellate Court Rules requires Appellant to serve a copy of the Record on Appeal on each party who has served a brief within thirty (30) days after service of the last brief. Appellant inadvertently and mistakenly failed to serve on Respondents a copy of the Record on Appeal based upon the parties' respective designations. Therefore, the parties did not serve and file Final

Briefs and the Record on Appeal was not filed. On February 27, 2014, the Honorable Clerk of Court of the South Carolina Court of Appeals issued an Order dismissing the Appeal due to Appellant's failure to timely serve and file the record on appeal, as required by Rule 210 of the South Carolina Appellate Court Rules. Appellant now moves to reinstate his appeal.


### ARGUMENT

Appellant respectfully requests this Court reinstate his appeal and permit him to serve the Record on Appeal on counsel for Respondents, after which the parties shall file Final Briefs and Appellant shall file the Record on Appeal pursuant to Rule 210 of the South Carolina Appellate Court Rules. Appellant understands the rules are not mere technicalities; however, Appellant's oversight in timely serving and filing the Record on Appeal following exchange of the parties' Initial Briefs was unintentional. Appellant had no intent to unnecessarily delay the proceedings. Dismissal of the underlying Appeal would be highly prejudicial to Appellant. We pray this Court will seek and permit substantial justice between the litigants and, therefore, reinstate the underlying Appeal.

Appellant does not contend this Court's Honorable Clerk of Court committed an error of law in dismissing his appeal. Appellant further understands, should this Court be inclined to reinstate his appeal, it may impose appropriate sanctions at its discretion. The requirement that Appellant serve and file the Record on Appeal in this action was omitted through mistake and inadvertence. Appellant respectfully requests this Court grant his motion to reinstate his Appeal and impose such terms

and conditions as this Court shall find just in the premises to protect Respondents. Whether Appellant is precluded from filing a Final Brief or the time for filing the Record on Appeal is reduced, Appellant would accept the sanctions deemed appropriate by this Court to be permitted to proceed with the present Appeal.

March 13, 2014

  
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Attorney for Respondents

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**PROOF OF SERVICE**

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I certify that I have served Appellant's Notice of Motion and Motion to Reinstate the Appeal on Respondents Laurens County and SC Association of Counties SIF by depositing a copy of it in the United States Mail, postage prepaid, on March 13, 2014, addressed to their attorney of record, Richard B. Kale, WILSON JONES CARTER & BAXLEY, P.A., 872 S. Pleasantburg, Greenville, South Carolina 29607.

**(Signature on Following Page)**

March 13, 2014



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