

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
APPELLATE PANEL

MAR 28 2014

SC Court of Appeals

7/17/35

Appellate Case No. 2013-002228
W.C.C. File No. 1014463

George Glover, Employee,Appellant,

v.

Piggly Wiggly, Employer, and Constitution State Service Company as
TPA for Greenbax Enterprise, Inc., Carrier, Respondents.

RESPONDENTS' MOTION TO STAY OR DISMISS

Pursuant to Rule 240, SCACR, Respondents Piggly Wiggly, Employer, and Constitution State Service Company as TPA for Greenbax Enterprise, Inc., Carrier (collectively "Respondents") move to stay further deadlines in the instant appeal or to dismiss. Respondents' motion is based upon the failure by Appellant George Glover ("Glover") to comply with the South Carolina Appellate Court Rules, discussed in greater detail below.

ARGUMENT

Glover initiated this workers' compensation appeal with the filing of his Notice of Appeal, Initial Brief, and Designation of Matter to be Included in the Record on Appeal in this Court on or after November 1, 2013. In response, Respondents filed their Initial Brief and Designation of Matter to be Included in the Record on Appeal ("Designation of

Matter”) on January 15, 2014. In their Designation of Matter, Respondents specifically designated thirteen separate items to be included in the Record on Appeal in this matter. Based upon the date of service of Respondents’ Initial Brief and Designation of Matter, Glover would have been required to serve the Record on Appeal no later than February 14, 2014, followed by his final brief twenty days later.

On February 25, 2014, and after the deadline for Glover to serve the Record on Appeal, Respondents received this Court’s February 24, 2014 letter to Glover acknowledging his request for an extension of time and noting certain deficiencies therein, including his failure to include proof of service of the motion upon Respondents. Thereafter, on March 4, 2014, Respondents received a facsimile transmission regarding the requested extension that included a Proof of Service dated March 4, 2014. (*See* March 4, 2014 Correspondence, attached as Exhibit A) In its March 7, 2014 Order, this Court granted Glover’s request for an extension of time until March 17, 2014, to serve the Record on Appeal and file his proof of service thereof.

On or about March 17, 2014, Glover served the following documents: the Record on Appeal, his Final Brief of Appellant, and his Certificate of Counsel certifying that his Final Brief “complies with Rule 211(b), SCACR.” (*See* Filings, attached as Exhibit B) Notably absent is a proof of service of the record as required by the Court’s March 7 Order. Equally problematic is Glover’s failure to comply with Rule 267, SCACR, with regard to his Final Brief. Going further, rather than including properly designated material in the Record on Appeal, Glover has merely included portions of Respondents’ Initial Brief previously filed with the Court. Until these errors have been corrected, it will be difficult, if not impossible, for Respondents to calendar a valid deadline for

compliance with their obligations pursuant to Rule 211, SCACR.

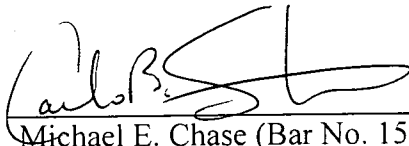
In light of the foregoing, Respondents respectfully move this Court for an order directing Glover to cure the deficiencies noted herein and setting a deadline for compliance. In addition, Respondents respectfully request the Court stay further deadlines pending resolution of this motion, and that it dismiss Glover's appeal outright and with prejudice in the event he fails to cure these deficiencies within the deadline to be established by the Court.

CONCLUSION

For the reasons stated herein, Respondents respectfully move this Court to stay further deadlines pending resolution of the noted deficiencies and to dismiss in the event Appellant fails to cure said deficiencies within the time permitted by the Court.

March 28, 2014

By:



Michael E. Chase (Bar No. 15230)
Carmelo B. Sammataro (Bar No. 69746)
TURNER PADGET GRAHAM & LANEY P.A.
Post Office Box 1473
Columbia, SC 29202
Phone: (803) 254-2200
Fax: (803) 799-3957

ATTORNEYS FOR RESPONDENTS

EXHIBIT A

Ms. Moody

Street Address

Address 2

City, ST, ZIP Code

Phone: ~~843-866-2882~~ 8037936395

Fax: 843-866-~~2197~~

E-mail address

FAX

Fax Transmittal Form

To Cheryl Hillard
Name: Michael E. Chase, Respondent
Organization Name/Dept:
CC:
Phone number: 803-227-4276
Fax number: 803-400-1551

From George Glover
Sender's Name George Glover
Sender's Title Appellant
Company CIA

Date sent: 3/4/2014
Time sent: 156
of pages including cover page: 7

- Urgent
- For Review
- Please Comment
- Please Reply

Message: Cheryl, Please advise and give this information to Michael E Chase.

Thank You,
George Glover

Ms. Moody

Street Address

Address 2

City, ST ZIP Code

Phone: ~~843-866-2032~~ 803 793 637

Fax: 843-866-~~2032~~ 2197

E-mail address

FAX

Fax Transmittal Form

To *Michael E Chase, Resident*
Name: *Michael E Chase*
Organization Name/Dept: *Piggly Wiggly,*
CC:
Phone number:
Fax number: *803-400-1465*

From *George Glover*
Sender's Name
Sender's Title *Appellant*
Company *C/A*

Date sent: *3/4/14*
Time sent: *1:40 PM*
of pages including cover page: *6*

- Urgent
- For Review
- Please Comment
- Please Reply

Message:

Michael E Chase, there was a copy of these faxed documents sent to your email address mchase@turnerpadget.com

Thank You,

George Glover

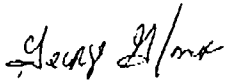
March 4, 2014

To Whom It May Concern:

This is to advise you that a request was made for an extension on the Record of Appeal and the Final Brief. I also filed a request for an extension with the Court of Appeals with a service date of February 18, 2014 and was certified on the 20th of February.

I am sending this information (a request was made for an extension on the Record of Appeal and the Final Brief) to your email address mchase@turnerpadget.com and also faxing this to request to 803-300-1465, this day, 4th of March of 2014.

Thank you,



George Glover

PROOF OF SERVICE OF THE RECORD ON APPEAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Case No. 1014463
Case No. 2013-002228

George Glover,

Appellant,

v.

Michael Chase, as Attorney
for Piggly Wiggly,

Respondent.

PROOF OF SERVICE

I certify that I have served the Proof of Service for a Request for an Extension for the Record on Appeals to Piggly Wiggly by sending a copy of the request, by faxing to 803-400-1465 and emailing to mchase@turnerpadget.com, on March 4, 2014, addressed to the attorney of record, Michael Chase, Turner, Padget, Graham and Lanny, P.A. 1901 Main Street 17th Floor, Columbia, SC 29201.

There was a Request for an Extension filed to the Court of Appeals with a service date of February 18, 2014. It was certified on February 20, 2014.

George Glover

March 4, 2014

s/ George Glover
George Glover
235 Progressive Way
Denmark, South Carolina 29042
(803) 793-6375
Appellant

**FORM 7
PROOF OF SERVICE OF THE FINAL BRIEF**

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Case No. 1014463
Case No. 2013-002228

George Glover,

Appellant,

v.

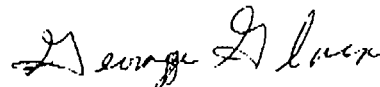
Michael Chase, as Attorney
for Piggly Wiggly,

Respondent.

PROOF OF SERVICE

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March 4, 2014

s/ George Glover

George Glover
235 Progressive Way
Denmark, South Carolina 29042
(803) 793-6375
Appellant

**FORM 7
PROOF OF SERVICE OF THE FINAL BRIEF**

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Case No. 1014463
Case No. 2013-002228

George Glover,

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Michael Chase, as Attorney
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March 4, 2014

s/ George Glover
George Glover
235 Progressive Way
Dcnmark, South Carolina 29042
(803) 793-6375
Appellant

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
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March 4, 2014

s/ George Glover
George Glover
235 Progressive Way
Denmark, South Carolina 29042
(803) 793-6375
Appellant

EXHIBIT B

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
APPELLATE PANEL

Appellate Case No. 2013-002228
W.C.C. File No. 1014463

George Glover, Employee,Appellant,

v.

Piggly Wiggly, Employer, and Constitution State Service Company as
TPA for Greenbax Enterprise, Inc., Carrier, Respondents.

INITIAL BRIEF OF RESPONDENTS

Michael E. Chase (Bar No. 15230)
Carmelo B. Sammataro (Bar No. 69746)
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ATTORNEYS FOR RESPONDENTS

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUES ON APPEAL1

STATEMENT OF THE CASE2

STATEMENT OF FACTS5

ARGUMENT.....9

 I. THE UNAPPEALED ORDER OF COMMISSIONER WILLIAMS BECAME THE LAW OF THE CASE PURSUANT TO THE DOCTRINE OF *RES JUDICATA*, THEREBY PRECLUDING FURTHER REVIEW OF APPELLANT’S CLAIM FOR WORKERS’ COMPENSATION BENEFITS9

 II. APPELLANT’S FAILURE TO FILE A TIMELY FORM 30, REQUEST FOR COMMISSION REVIEW, DEPRIVED THE APPELLATE PANEL OF THE FULL COMMISSION OF APPELLATE JURISDICTION AND BARS FURTHER REVIEW OF APPELLANT’S CLAIM FOR WORKERS’ COMPENSATION BENEFITS.....11

CONCLUSION.....14

TABLE OF AUTHORITIES

State Cases

<i>Allison v. W.L. Gore & Associates</i> , 394 S.C. 185, 714 S.E.2d 547 (2011)	11-12
<i>Bennett v. South Carolina Department of Corrections</i> , 305 S.C. 310, 408 S.E.2d 230 (1991)	10
<i>Brunson v. American Koyo Bearings</i> , 367 S.C. 161, 623 S.E.2d 870 (Ct. App. 2005).....	12
<i>Canal Ins. Co. v. Caldwell</i> , 338 S.C. 1, 524 S.E.2d 416 (Ct. App. 1999).....	12-13
<i>Cooper v. McDevitt & Street Co.</i> , 260 S.C. 463, 196 S.E.2d 833 (1973).....	2-3
<i>Green v. City of Columbia</i> , 311 S.C. 78, 427 S.E.2d 685 (Ct. App. 1993)	12
<i>Lloyd v. AT & T Nassau Metals Corp.</i> , 299 S.C. 207, 383 S.E.2d 257 (Ct. App. 1989).....	12
<i>Owenby v. Owens Corning Fiberglass</i> , 313 S.C. 181, 437 S.E.2d 130 (Ct. App. 1993).....	9
<i>Skinner v. Westinghouse Electric Corporation</i> , 380 S.C. 91, 668 S.E.2d 795 (2008)	12
<i>South Carolina Coastal Conservation League v. South Carolina Department of Health and Environmental Control</i> , 380 S.C. 349, 669 S.C. 899 (Ct. App. 20008)	12-13

Statutes

S.C. Code Ann. 41-17-50.....	11-13
S.C. Code Ann. 41-17-60.....	12
25A S.C. Code Regs. 67-701	11, 13

STATEMENT OF ISSUES ON APPEAL

- I. DID THE UNAPPEALED ORDER OF COMMISSIONER WILLIAMS BECOME THE LAW OF THE CASE PURSUANT TO THE DOCTRINE OF *RES JUDICATA*, THEREBY PRECLUDING FURTHER REVIEW OF APPELLANT'S CLAIM FOR WORKERS' COMPENSATION BENEFITS?

- II. DID APPELLANT'S FAILURE TO FILE A TIMELY FORM 30, REQUEST FOR COMMISSION REVIEW, DEPRIVE THE APPELLATE PANEL OF THE FULL COMMISSION OF APPELLATE JURISDICTION AND BAR FURTHER REVIEW OF APPELLANT'S CLAIM FOR WORKERS' COMPENSATION BENEFITS?

STATEMENT OF THE CASE

Appellant George Glover (“Glover”) commenced this action with the filing of his Form 50, Notice of Claim, with the South Carolina Workers Compensation Commission on or about November 8, 2010. In this Form 50, Glover sought temporary total disability compensation benefits for injury to his spine, left shoulder, left arm, and hand allegedly sustained in a work-related incident that occurred September 27, 2010. (November 8, 2010 Form 50, Notice of Claim) Glover filed his Form 50, Request for Hearing, on or about June 13, 2011, in which he sought disability compensation benefits and continued medical monitoring and treatment stemming from his alleged September 27, 2010 injuries. (June 13, 2011 Form 50, Request for Hearing) In their Form 51 dated July 13, 2011, Employer’s Answer, Respondents Piggly Wiggly (“Employer”) and Constitution State Service Company as TPA for Greenbax Enterprises, Inc. (“Carrier”) (collectively “Respondents”) admitted notice of the injury but denied the claim on the basis that Glover made false representations in his application for employment, thereby barring his claim pursuant to *Cooper v. McDevitt & Street Co.*, 260 S.C. 463, 196 S.E.2d 833 (1973). (July 13, 2011 Form 51, Employer’s Answer)

Following a hearing on November 28, 2011, Commissioner Derrick L. Williams (“Commissioner Williams”) issued his January 12, 2012 Order denying compensation benefits. Commissioner Williams made specific determinations that Glover was not a credible witness, that he knowingly and willfully misrepresented his physical condition when he completed Employer’s pre-placement medical questionnaire, that Employer relied upon the medical questionnaire, and that Employer’s reliance was a “substantial factor when deciding whether to hire” Glover. (January 12, 2012 Order, pp. 8-9, ¶¶ 1, 6)

Glover did not appeal the January 12, 2012 Order, opting instead to file a successive Form 50, Request for Hearing, dated February 9, 2013. Proceeding *pro se*, Glover once again sought disability compensation for the injuries allegedly sustained in the incident that occurred September 27, 2010. (February 9, 2013 Form 50, Request for Hearing) Respondents filed their Form 51, Employer's Answer, in which they denied Glover's claim on the grounds that his successive Form 50 was barred by the doctrine of *res judicata* given his failure to file a timely Form 30, Request for Commission Review, in response to Commissioner Williams' January 12, 2012 Order. (March 13, 2013 Form 51, Employer's Answer)

Following a second hearing on May 7, 2013, Commissioner Avery B. Wilkerson, Jr. ("Commissioner Wilkerson"), issued his June 6, 2013 Order in which he found as fact that Glover did not appeal the earlier order denying benefits and that "*res judicata* bars re-litigation of this case." (June 6, 2013 Order, p. 4, ¶ 4) Commissioner Wilkerson also concluded that the law of the case, as set forth in Commissioner Williams' January 12, 2012 Order, "remains that [Glover's] claim is barred based on *Cooper v. McDevitt & Street Co.*, 260 S.C. 463, 196 S.E.2d 833 (1973) for fraud in the application of employment." (*Id.*, p. 5, ¶ 4)

Glover, again proceeding *pro se*, filed a Form 30, Request for Commission Review, raising two issues for review. First, Glover contended that Commissioner Wilkerson erred in concluding the doctrine of *res judicata* barred re-litigation of his claim. Second, Glover argued Commissioner Wilkerson erred in declining to address the merits of the underlying claim. (June 11, 2013 Form 30, Request for Commission Review) In its September 19, 2013 Order, the unanimous Appellate Panel of the Full

Commission affirmed Commissioner Wilkerson's June 6, 2013 Order denying benefits in its entirety and without "any new findings, changes, or amendments. . . ." (September 19, 2013 Order of Appellate Panel, p. 4) Thereafter, Glover filed his Notice of Appeal in this Court, followed by his Initial Brief and Designation of Matter to be Included in the Record on Appeal, both dated November 1, 2013.

STATEMENT OF THE FACTS

Glover is approximately 58 years old and resides in Denmark, South Carolina. (Glover Dep., p. 7, lines 16-25; November 28, 2011 Hr'g Trans., p. 7, lines 9-14) He is divorced, lives alone, and has a high school diploma. (Glover Dep., p. 8, lines 3-22) Following high school, he went to work for Sunbeam for two years, followed by 30 years of service as a forklift operator at Dixie-Narco in Williston, South Carolina. (*Id.*, p. 9, lines 10-25) He left Dixie-Narco after the Williston plant was sold and went to work part-time at Advance Auto Parts ("Advance Auto") and for Employer. (*Id.*, p. 10, lines 1-11) He eventually assumed full-time status at Advance Auto in 2008 and continued his part-time work for Employer. (*Id.*, p. 1-8)

Glover had two prior workers' compensation claims while working for Advance Auto. The first occurred in 2003 when a battery exploded and injured his right hand. (Glover Dep., p. 4, line 12 – p. 5, line 6; November 28, 2011 Hr'g Trans. p. 8, lines 9-21) Glover received a settlement in reference to that claim. (Glover Dep., p. 6, lines 4-9; November 28, 2011 Hr'g Trans., p. 9, lines 3-5) Glover had a second workers' compensation claim in either 2005 or 2006 when he fell from a ladder at Advance Auto, injuring his lower back and left leg. (November 28, 2011 Hr'g Trans., p. 9, lines 8-15) Glover also settled this claim. (*Id.*, p. 9, lines 24-25) Following his 2008 injury at Advance Auto, Glover treated with Dr. Blake Moore, who assigned a 35 percent impairment rating relative to the whole person in relation to the right arm, cervical spine, and lumbar spine. (Defendants' APA 15; November 28, 2011 Hr'g Trans., p. 39, lines 5-13) He also had carpal tunnel syndrome release to the left hand in 2003; however, he responded "no" to Employer's health questionnaire regarding carpal tunnel syndrome.

(*Id.*, p. 41, lines 2-16; Glover Dep., Exhibit 1)

Glover also testified that he injured his low back in a car accident in 2008, underwent six weeks of chiropractic therapy, but that the injury “wasn’t serious.” (Glover Dep., p. 17, line 10 – p. 18, line 25) At the November 28, 2011 hearing before Commissioner Williams, however, Glover testified that his head hit the roof of the car and that he sustained injury to his lower back and his left shoulder. (November 28, 2011 Hr’g Trans., p. 10, lines 17-19) Glover denied injury to other body parts in connection with the 2008 auto accident, as well as any low back injury prior to the accident. (Glover Dep., p. 20, lines 1-21) He also denied prior injury or medical treatment to his left side, left shoulder, or neck. (*Id.*, p. 20, line 22 – p. 21, line 25) Commissioner Williams recognized the inconsistency in Glover’s testimony and questioned him extensively regarding his testimony relating to his extensive prior injuries and treatment. (November 28, 2011 Hr’g Trans., p. 11, line 15 – p. 12, line 13) In response to Commissioner Williams’ direct examination, Glover admitted that his answers to deposition questions relating to his prior injuries and course of treatment were not truthful. (*Id.*, p. 14, lines 23-25)

Michelle Johnson, the co-operator of the Piggly Wiggly store in Bamberg, South Carolina, testified that she hired Glover. (November 28, 2011 Hr’g Trans., p. 52, lines 3-23) At the time she hired Glover, Johnson gave him a pre-placement medical history questionnaire to complete. (*Id.*, p. 52, line 24 – p. 53, line 9) Johnson remained in the room with Glover as he answered the medical questionnaire and observed him complete and sign the form on May 28, 2009. (*Id.*, p. 53, line 13 – p. 54, line 4) Johnson testified that had Glover answered truthfully regarding his prior injuries, she would have been

required to submit his employment application to Employer's risk management department to determine whether Glover could perform the job duties for which he sought employment. (*Id.*, p. 54, lines 8-15) She further testified that Employer relied upon his answers, which were a substantial factor in its decision to hire Glover. (*Id.*, p. 54, lines 16-21)

David Benenhaley, Employer's director of risk management, also testified that an applicant who had been recommended for an MRI of the cervical or lumbar spine or presented with Glover's prior history of physical injuries would be required to provide additional details or obtain a medical clearance before Employer could determine whether or not to hire the applicant. (November 28, 2011 Hr'g Trans., p. 58, lines 25 – p. 59, line 21) Benenhaley also indicated Employer relied on Glover's responses to the questionnaire and that those answers were a substantial factor in Employer's decision to hire him. (*Id.*, p. 60, lines 12-17) He further testified that Glover was terminated for his failure to provide truthful responses to Employer's questionnaire, which is grounds for termination. (*Id.*, p. 60, lines 1-6)

Employer hired Glover in May 2009 as a part-time employee averaging between 21 and 25 hours per week. (Glover Dep., p. 25, lines 9-24) Glover was hired as a grocery clerk with an hourly wage of \$7.50. (*Id.*, p. 26, line 23 – p. 27, line 1) His duties included putting up stock, buffing the floor, assisting customers, and retrieving grocery buggies from the store parking lot. (November 28, 2011 Hr'g Trans., p. 8, lines 1-8) He testified that while he was given some paperwork, Employer did not ask him about his prior medical history and injuries at the time he was hired. (Glover Dep., p. 39, line 9 – p. 40, line 13) Nevertheless, Glover agreed he checked and/or responded "no" in

response to all questions and then signed Employer's medical history questionnaire on May 29, 2009. (*Id.*, p. 41, line 14 – p. 42, line 19; Glover Dep., Exhibit 1)

On the day of his alleged injury, it was raining as Glover was pushing approximately six grocery carts in the store parking lot. (Glover Dep., p. 27, lines 7-9) He tried to stop the carts as a car was approaching, was unable to do so, and fell onto his left side. (*Id.*, p. 27, lines 10-19) No witnesses to the event came forward, and Glover reported it to the closing manager, Terrell Blanchard. (*Id.*, p. 27, line 20 – p. 28, line 3; November 28, 2011 Hr'g Trans., p. 16, line 25 – p. 17, line 5) Glover went home and then reported to the emergency room the next day with complaints of left shoulder, neck, left hand, and low back pain. (Glover Dep., p. 28, lines 11-21; November 28, 2011 Hr'g Trans., p. 16, lines 6-12) Thereafter, Glover treated with Dr. Padgett, who referred him for physical therapy. (*Id.*, p. 16, lines 13-22) He was "put out" of work for "a couple of months" and then released to light duty work. (Glover Dep., p. 28, line 22 – p. 29, line 6) As of the date of his deposition, Glover remained on light duty for Employer, handing out fliers and answering the phone, until the date of his termination. (*Id.*, p. 30, lines 13-23)

ARGUMENT

During the November 28, 2011 hearing, Commissioner Williams specifically advised Glover of his right to appeal any adverse ruling to the Appellate Panel of the Full Commission within fourteen days of receipt of a written order. (November 28, 2011 Hr'g Trans., p. 4, lines 15-21) Disregarding this admonition from the single commissioner, Glover neglected to file a timely Form 30, Request for Commission Review, within the jurisdictional fourteen days provided by statute. As such, Commissioner Wilkerson and the Appellate Panel correctly concluded that Commissioner Williams' order became the law of the case. For this reason, as discussed more fully below, this Court lacks appellate jurisdiction to further consider the relative merits of Glover's underlying claim and should affirm the orders below finding that the January 12, 2012 Order is entitled to preclusive effect.

I. THE UNAPPEALED ORDER OF COMMISSIONER WILLIAMS BECAME THE LAW OF THE CASE PURSUANT TO THE DOCTRINE OF *RES JUDICATA*, THEREBY PRECLUDING FURTHER REVIEW OF APPELLANT'S CLAIM FOR WORKERS' COMPENSATION BENEFITS.

The doctrine of *res judicata* precludes re-litigation of issues previously decided between the same parties for the same claims and bars further consideration of Glover's request for benefits stemming from his alleged September 27, 2010 work injury. "The doctrine requires three essential elements: (1) the judgment must be final, valid and on the merits; (2) the parties in the subsequent action must be identical to those in the first; and (3) the second action must involve matter properly included in the first action." *Owenby v. Owens Corning Fiberglass*, 313 S.C. 181, 183, 437 S.E.2d 130, 131 (Ct. App. 1993) (internal citation omitted). Further, the South Carolina Supreme Court has

clarified that “under the doctrines of *res judicata* and collateral estoppel, the decision of an administrative tribunal precludes the re-litigation of the issues addressed by that tribunal in a collateral action.” *Bennett v. South Carolina Department of Corrections*, 305 S.C. 310, 312, 408 S.E.2d 230, 231 (1991).

In this case, Commissioner Williams issued his January 12, 2012 Order denying Glover’s claim for benefits based upon Respondents’ defense of fraud in the application for employment, and the Commission’s file is void of any evidence Glover initiated a timely appeal of that order. Moreover, identity of the parties in this appeal is identical to the parties at the hearing before Commissioner Williams on November 28, 2011. Similarly, the issue – whether or not Glover is entitled to workers’ compensation benefits for work-related injuries he allegedly sustained on September 27, 2010 – was the precise issue presented to and decided by Commissioner Williams. As such, Commissioner Wilkerson correctly concluded that Glover’s second attempt to obtain workers’ compensation benefits pursuant to the successive Form 50, Request for Hearing, was barred by application of the doctrine of *res judicata*.

Inasmuch as the doctrine of *res judicata* barred re-litigation of the identical issues presented in Glover’s successive Form 50, Request for Hearing, Commissioner Wilkerson and the Appellate Panel correctly refrained from addressing the relative merits of Glover’s claims. Permitting Glover to re-litigate Commissioner Williams’ unappealed Order would amount to an impermissible second bite of the apple and instead required Glover to file a timely appeal. This he did not do. As a result, and for the additional reasons expressed in Section II of this Brief, the Appellate Panel reached the correct result in affirming the denial of benefits. This Court should affirm that order and refrain

from any further appellate review of Glover's underlying claim for workers' compensation benefits.

II. APPELLANT'S FAILURE TO FILE A TIMELY FORM 30, REQUEST FOR COMMISSION REVIEW, DEPRIVED THE APPELLATE PANEL OF THE FULL COMMISSION OF APPELLATE JURISDICTION AND BARS FURTHER REVIEW OF APPELLANT'S CLAIM FOR WORKERS' COMPENSATION BENEFITS.

Implicit in the of the Appellate Panel's application of the doctrine of *res judicata* is its recognition that it lacked appellate jurisdiction to address the relative merits of Glover's claim for benefits. This is so because Glover's only recourse following issuance of Commissioner Williams' Order was the timely filing of a Form 30, Request for Commission Review. Because he failed to file a timely Form 30, Request for Commission Review, all subsequent reviewing tribunals, including this Court, lack appellate jurisdiction to review Commissioner Williams' adverse determination of the compensability question.

In order to perfect a timely appeal of a workers' compensation matter, the appealing party must file a Form 30, Request for Commission Review, within fourteen days of receiving notice of the single commissioner's order. *See* S.C. Code Ann. 41-17-50 (Supp. 2012); 25A S.C. Code Reg. 67-701 (2012). The South Carolina Supreme Court has addressed the precise question presented here. First, the court has explained "this issue is properly couched as one of appellate jurisdiction rather than subject matter jurisdiction." *Allison v. W.L. Gore & Associates*, 394 S.C. 185, 188, 714 S.E.2d 547, 549 (2011) (citation omitted). Turning to the merits, the *Allison* Court also observed that the Commission "lacks the authority to extend the fourteen days permitted for the filing of an appeal from the decision of a single commissioner." *Id.*, 394 S.C. at 188-189, 714 S.E.2d

appeal deprives the appellate court of jurisdiction); *South Carolina Coastal Conservation*, 380 S.C. at 376-377, 669 S.C. at 913-914 (“Compliance with statutory time periods for filing appeals is a prerequisite for an appellate entity to have jurisdiction . . .”).

Like the board at issue in *South Carolina Coastal Conservation League*, the Commission in this case lacked “authority to extend or expand the period in which appeals requests could be timely filed and was limited to the . . . filing window enacted by the General Assembly.” 380 S.C. at 376, 669 S.E.2d at 913. (Emphasis added) A similar conclusion is wholly supported in this case by the plain language of S.C. Code Ann. § 42-17-50, as well as by the Commission’s own regulatory provision accurately describing the fourteen day period as “jurisdictional.” *See* 25A S.C. Code Regs. § 67-701 (Supp. 2009). To hold otherwise and to proceed to the merits of Glover’s underlying claim for benefits would result in direct contravention of legislative intent and render the fourteen day provision nugatory.

The original Order of Commissioner Williams indicates it was served upon Glover via regular and certified mail on January 12, 2012. (January 12, 2012 Order, p. 10) Glover did not appeal this order, opting instead to file a subsequent Form 50, Request for Hearing, on or about February 9, 2013, for the exact same claim. In response to Glover’s attempt to re-litigate his claims, Commissioner Wilkerson’s June 6, 2013 Order specifically confirms “[t]he Commission did not receive notice of appeal from Claimant with regard to Commissioner Williams’ Order.” (June 6, 2013 Order, p. 4, ¶ 4) The Appellate Panel affirmed this finding and specifically declined to make “any new findings, changes, or amendments to the Decision and Order of the Single Commissioner,

dated June 6, 2013. (September 19, 2013 Order of the Appellate Panel, p. 4) Thus, the Appellate Panel correctly recognized the preclusive effect of Commissioner Williams' order and appropriately denied benefits. (*Id.*) This result should be affirmed.

CONCLUSION

For all of the reasons stated herein, Respondents submit the January 12, 2012 Order of the single commissioner is entitled to preclusive effect pursuant to the doctrine of *res judicata*, that the September 19, 2013 Order of the Appellate Panel was correctly decided and should be affirmed, and that this Court and the Full Commission lack appellate jurisdiction to consider further the underlying merits of Glover's claim for benefits.

TURNER, PADGET, GRAHAM & LANEY, P.A.

January 15, 2014

By:



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ATTORNEYS FOR RESPONDENTS

FINAL BRIEF OF APPELLANT*

THE STATE OF SOUTH CAROLINA
In The Court of Appeals
[In The Supreme Court]

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

George E. Brown, Circuit Court Judge

Case No. 1014463
Case No. 2013-002228

George Glover, Employee

Appellant,

v.

Piggly Wiggly, Employer,
and Constitution State Service Company as
TPA Greenbax Enterprises, Inc., Carrier.

Respondents.

FINAL BRIEF OF APPELLANT

George Glover
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(803) 793-6375
Employee, Appellant

* Under Rule 267(e), SCACR, the cover of the final briefs should be the following colors: brief of appellant - blue; brief of respondent - red; reply brief - gray; and amicus curiae or intervenor - green.

TABLE OF CONTENTS

Table of Authorities ii

Statement of Issues on Appeal 1

Statement of the Case 1

Arguments

1. BECAUSE RESPONDENT COULD HAVE RAISED FRAUD IN HIS PRIOR BREACH OF CONTRACT SUIT AGAINST APPELLANT, HE IS BARRED BY RES JUDICATA FROM BRINGING THIS SUIT2

2. BECAUSE FRAUD MUST BE PROVED BY CLEAR AND CONVINCING EVIDENCE, THE COURT ERRED WHEN IT CHARGED THE JURY THAT THE RESPONDENT MUST PROVE FRAUD BY A PREPONDERANCE OF THE EVIDENCE.....2

Conclusion3

TABLE OF AUTHORITIES*

CASES

Cooper v. Mc DeVitt, 260 S.C.436, 196 S.E.2d 833 (1973).....2

REGULATIONS

Regulation 66-701 (a).....2

STATEMENT OF ISSUES ON APPEAL

I am appealing my case in which I was injured on the job on September 27, 2010. I am requesting to be compensated for my injuries that occurred while I was working at Piggly Wiggly. I am also requesting that I get the treatment that I fairly deserve for the injuries that took place at Piggly Wiggly. I am appealing my case in which, to be fully compensated for salary and wages not received at the time of injury, necessary treatment that is needed for my injuries to my shoulder, neck, lower back, and left hand (any other injuries that may have occurred because of non-treatment). Along with my appeal, I would also like to include prescriptions and/or medications (that was paid by me or is needed to assist me with recovering from my injuries), doctor's visits (paid for by the Respondent in order to make sure the necessary treatment is given) and compensate for the time out of work (because of injuries that occurred while working at Piggly Wiggly). I believe that I was not treated fairly at the hearing by Commissioner Williams. He made a statement that he didn't think that I was hurt at that time, while my medical records show differently. I have proof of all doctors that I went to in order to support my case in order to be compensated.

STATEMENT OF THE CASE

On September 27, 2010, George Glover was injured on the job where he work for Piggly Wiggly and sustained injuries to his shoulder, neck, lower back, left hand/wrist and is asking for compensation.

Client contends he injured his left shoulder, left wrist, lower back on September 27, 2010, when he slipped and fell while pushing shopping carts. If it is found compensable, he claims entitlement to further medical treatments and reimbursement for any causally related medicals. On the other hand defendant deny that client sustained an injury by accident arising out of the course and scope of employment, and content that the client is barred by client's false representation in his application for employment pursuant to Cooper v. Mc DeVitt and Street Co., 260S.C.463,196S.E.2d833(1973).

The hearing was held by Commissioner Williams on November 28, 2011. The hearing was also held by Commissioner Avery Wilkerson on May 7, 2013. On June 6, 2013, Commissioner Wilkerson issued an order concerning the client, George Glover and denied the claim.

On October 4, 2013, George Glover served the Notice of Appeal on Piggly Wiggly.

ARGUMENTS

- I. BECAUSE RESPONDENT COULD HAVE RAISED FRAUD IN HIS PRIOR BREACH OF CONTRACT SUIT AGAINST APPELLANT, HE IS BARRED BY RES JUDICATA FROM BRINGING THIS SUIT.

[Res Judicata bars re-litigations of the case.]

- II. BECAUSE FRAUD MUST BE PROVED BY CLEAR AND CONVINCING EVIDENCE, THE TRIAL COURT ERRED WHEN IT CHARGED THE JURY THAT THE RESPONDENT MUST PROVE FRAUD BY A PREPONDERANCE OF THE EVIDENCE.

[Commissioner Wilkerson sent instructions to Attorney Chase on May 15, 2013 to draft a proposal order with his directive within 30 days]

CONCLUSION

For the reasons stated, this Court should reverse the judgment of the circuit court. Regulation 66-701(a) of the South Carolina Code of Laws is applicable in defining the period in which the client has a right to file a form 30 request for commission review with the commission.

Respectfully submitted,

March 17, 2014

/s/ George Glover
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Appellant

CERTIFICATE OF COUNSEL IN FINAL BRIEF

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

George E. Brown, Circuit Court Judge

Case No. 1014463
Case No. 2013-002228

George Glover, as Employee

Appellant,

v.

Michael Chase, as Attorney
for Piggly Wiggly

Respondent.

RECEIVED

MAR 28 2014

SC Court of Appeals

CERTIFICATE OF COUNSEL

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

March 17, 2014

s/ George Glover
George Glover
235 Progressive Way
Denmark, South Carolina 29042
(803) 793-6375
Appellant

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
APPELLATE PANEL

Appellate Case No. 2013-002228
W.C.C. File No. 1014463

RECEIVED

MAR 28 2014

SC Court of Appeals

George Glover, Employee,Appellant,

v.

Piggly Wiggly, Employer, and Constitution State Service Company as
TPA for Greenbax Enterprise, Inc., Carrier, Respondents.

PROOF OF SERVICE

I certify this 28th day of March 2014 that I have served copies of
RESPONDENTS' MOTION TO STAY OR DISMISS by mailing same, postage prepaid
in the United States mail, addressed to the following:

Mr. George Glover
125 Progressive Way
Denmark, SC 29000


Virginia L. Crocker, Judicial Director
S.C. Workers' Compensation Commission
P. O. Box 1715
Columbia, SC 29202-1715

APPELLANT *PRO SE*

(Signature page to follow.)

TURNER PADGET GRAHAM & LANEY P.A.

March 28, 2014

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