

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

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APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

W.C.C. File No. 1116275

John McDaniel, Employee, Appellant,

v.

Career Employment Professional
d/b/a Snelling Staffing, Employer, and
United Wisconsin Insurance Co., Carrier, Respondents.

**MOTION TO STRIKE AND/OR AMEND
PORTIONS OF APPELLANT'S
INITIAL BRIEF AND
DESIGNATION OF MATTER**

Pursuant to Rules 208, 209, 210 and 240, SCACR, Respondents Career Employment Professional d/b/a Snelling Staffing and United Wisconsin Insurance Co. move this Court to strike and/or order Appellant to revise certain portions of his Initial Brief, and to strike and/or order Appellant to revise or clarify or provide Respondents with copies of certain items listed in his Designation of Matter to be Included on Appeal ("Designation"). Appellant has designated and substantively relied on materials and evidence in his Initial Brief that are not part of the record below and which must be stricken. In addition, Appellant has designated and cited to numerous other items that are undated or otherwise unclear. Furthermore, Appellant has designated items that Respondents do not have in their files. Finally, Appellant's Initial Brief

contains cites to materials and evidence that are not designated to be part of the Record on Appeal (“Record”).

According to Rule 209(a), SCACR, the designation of matter “shall set forth with specificity those parts of the transcript, pleadings, orders, exhibits, or other materials which [a party] proposes to include in the record on appeal.” In addition, Rule 209(b), SCACR, provides that “[t]he Designation must clearly identify what the party desires to have included in the Record on Appeal, and the Designation may only propose to include portions of the transcript, pleadings; orders, exhibits, or other materials which may be properly included in the Record on Appeal [See Rule 210(c)]. A party shall not include any matter in his Designation which is not relevant to the appeal.” Rule 210(c), SCACR, in turn, provides that “[t]he Record shall not ... include matter which was not presented to the lower court or tribunal.” Rule 208(b)(4) provides, in pertinent part, that an initial brief “shall contain references to the transcript, pleadings orders, exhibits, or other materials which may be properly included in the Record on Appeal ...”

It is well-established that appellate review of a Commission decision is confined to the record before the Commission. S.C. Code Ann. § 1-23-380(4); *see also Terry v. South Carolina Dept. of Health & Env’l Control*, 377 S.C. 569, 574, 660 S.E.2d 291, 294 (Ct. App. 2008) (appellate review of agency decisions “is confined to the record ...”). “This Court’s review is restricted to the evidence considered by the appellate panel in reaching its decision,” and may not rely on evidence not considered by the Commission. *Martin v. Rapid Plumbing*, 369 S.C. 278, 288, 631 S.E.2d 547, 553 (Ct. App. 2006).

First, Appellant has designated several items that were not part of the record before the Commission and, therefore, may not be included in the Record before this Court. These include:

1. “Recorded Conversation with Virginia Crocker regarding bifurcation and remand hearing”;

2. "Recorded Conversation with SC Workers Compensation Judicial Dept. & Keith Roberts regarding Remand Order";
3. "Email with Attachments submitting Amended Form 30 with Index of Exhibits & Exhibits (A-K)"

Items (1) and (2) are not official transcripts of proceedings before the Commission but, instead, purport to be Appellant's personal recordings of telephone conversations with the Judicial Director and Staff Attorney of the Commission. (See Initial Brief of Appellant, indicating "ROA___ (Emails & Tape Recordings)," Att. A, pp. 7, 30). A personally-recorded phone conversation is in no way part of the Commission's record in this matter and must be stricken from both Appellant's Initial Brief and Designation. To the extent Appellant intends to designate email correspondence with the Commission, at a minimum, he needs to indicate the dates of those emails so that Respondents can identify exactly what emails he is referencing.

Item (3) and the accompanying attachments were not considered by the Commission. (See Appellate Panel Decision and Order, dated December 19, 2013, Att. B, p. 6) ("the Appellant Panel did not consider any documents outside the record because the Claimant's Amended Form 30 was not timely served; therefore, any records submitted with the Amended Form 30 were not considered by the Panel"). Alternatively, to the extent that Appellant claims his Amended Form 30, emailed to the Commission on October 12, 2013, (Att. C), appealed rulings contained in the January 4, 2013 Single Commissioner Decision, it is clearly untimely pursuant to S.C. Code Ann. § 42-17-50 and S.C. Code Reg. § 67-701(A), which require that appeals to the Full Commission be filed within fourteen days of notice of a Commission order. Appellant's Amended Form 30 was filed more than eight months after the deadline to appeal the January 4, 2013 Single Commissioner Decision had run. Furthermore, to the extent Appellant is alleging his Amended Form 30 appealed rulings in the September 30, 2013 Single Commissioner

Decision, it is ineffectual because it was not accompanied by the appropriate filing fee. *See* S.C. Code Ann. § 42-17-50 (“Each application for commission review must be accompanied by a fee equal to that charged in circuit court for filing a summons and complaint in order to defray the costs of the review”); S.C. Code Reg. § 67-702(A) (“The appellant shall attach to the Form 30 the filing fee required by the Act”).¹ Because the items listed herein as (1)-(3) were not before the Commission, they may not be included in the Record and must be stricken from Appellant’s Designation. Furthermore, Appellant’s Initial Brief must be revised to delete any references to or arguments based on these non-record materials.

Second, many of Appellant’s designations fail to meet the level of specificity called for in Rule 209(a) & (b). He has failed to provide dates for various pleadings or communications that he wishes to have included in the Record on Appeal. Respondents have attempted to discern the dates of the following documents Appellant has designated:

4. “Form 58 Claimant’s Brief and APAs submitted” (*possibly dated October 31, 2012*);
5. “Form 58 Defendant’s [sic] Brief and APAs submitted” (*possibly dated November 5, 2012*);
6. “Emails regarding objection to Request for Full Commission Order & Proposed Finding of Fact w/ Attachment” (*possibly dated December 16, 2013*);
7. “Email with Attachments submitting Amended Form 30 with Index of Exhibits & Exhibits (A-K)” (*possibly dated October 14, 2013*);
8. “Claimant’s Full Commission Hearing Brief” (*possibly dated March 26, 2013*);
9. “Defendant’s [sic] Full Commission Response Brief” (*possibly dated April 10, 2013*);
10. “Claimant’s Full Commission Reply to Response Brief” (*possibly dated May 15, 2013*);

¹ Although S.C. Code Reg. § 67-702(B) allows a party to file a Form 32, Request to Waive Appeal Filing Fee, with a Form 30, Appellant did not do so here. Although Appellant requested a waiver from filing fees for some of the motions he filed with the Commission, that request was denied, (Att. D), and he did not file a Form 32 with his Amended Form 30.

11. "Letter submitting records of Jarred Lampkin and APAs" (*possibly dated May 17, 2013*);
12. "Motion for Additional Evidence to Complete the Record with Attachments (APAs 11-23)" (*possibly dated May 6, 2013*);
13. Motion for Additional Evidence and Deposition Testimony and Exhibits (Deposition Testimony of John C. McDaniel)" (*possibly dated May 10, 2013*);
14. "Motion for Penalties filed July 1, 2013 with Exhibits" (*we have one dated June 11, 2013 and filed June 14, 2103, please confirm if this is what is intended*); and
15. "Motion to Quash Subpoenas" (*possibly dated July 2, 2013*);

Respondents request that Appellant be ordered to confirm whether the documents and communications listed above as items (4)-(15), undated in Appellant's Designation, are the items he intends to designate and, if not, confirm the correct date(s) of the documents he has designated.

Third, there are items listed on Appellant's Designation that Respondents do not have in their files, including:

16. "Letter submitting Affidavits to SC Workers Compensation Commission dated October 7, 2103"; and
17. "Letter dated October 4, 2013 submitting additional medical records to include Dr. Tavel's MMI dated 7/22/2013."

Respondents request that Appellant provide them with a copy of the correspondence listed herein as items (16)-(17).

Fourth, Appellant's Initial Brief contains cryptic cites to the Commission record in violation of Rule 208(b)(4), SCACR. Specifically:

18. On page 12, of his Initial Brief, Appellant cites to "(ROA) _____)." It is unclear to what portion of the Record he is referring.

19. On page 13 of his Initial Brief, Appellant cites to “(ROA____ (Exhibit to Motion bate #127).” It is unclear to what Motion he is referring² and what the “bate #” reference indicates.
20. On page 13 of his Initial Brief, Appellant cites to (ROA _____ Exhibit to Motion bate #166-195).” It is unclear to what Motion he is referring³ and what the “bate #” reference indicates.
21. On page 18 of his Initial Brief, Appellant cites to “(ROA____ APA p.340-351)”; however, there are no APA submissions admitted before the Single Commissioner or the Full Commission with page numbers in this range. Claimant submitted APAs on October 31, 2012, with pages numbered 1-119, which were supplemented on November 15, 2012, with evidence numbered pages 120-122. Respondents submitted their APAs on November 5, 2012 including a total of 14 pages of evidence. (Att. E (Pre-Hearing Briefs and indexes to APA submissions)). Beyond the pay records of Jarred Lampkin, no additional APA submissions or evidence were accepted into the record by the Commission.
22. On page 24, of his Initial Brief, Appellant cites to “(ROA)_____ (APA)).” It is entirely unclear what pages in the APAs his reference indicates.

Respondents request that Appellant be ordered to revise his Initial Brief to clarify what portions of the record before the Commission is intended in items (18)-(22).

Fifth, Appellant’s Initial Brief cites to the Record for a number of items that are not included in his Designation. For example, on page 7 of Appellant’s Initial Brief, he cites to “(ROA__(Form 50))”; however, he has not designated any Form 50 to be included in the Record. There are numerous such citations in Appellant’s Initial Brief to items that are not designated. Respondents request that Appellant be ordered either to designate with sufficient detail those items to be included in the Record or to remove those references to the Record from Appellant’s Initial Brief.

Sixth, Appellant’s Initial Brief contains cites to materials that were neither contained in his Designation nor admitted before the Commission. Specifically:

² Appellant filed multiple motions with the Commission.

³ See footnote 2, *supra*.

23. On page 24, of his Initial Brief, Appellant cites to “(ROA ___ RCC report dated 2/27/12)”; however, no such report is contained in the APAs admitted into the record before the Commission.

Respondents request that Appellant be ordered to revise his Initial Brief to delete all references to and any arguments dependent on the non-record materials in item (23) above.

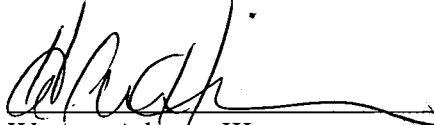
Finally, Respondents request that the briefing schedule, including the deadline for filing their Initial Brief and Designation of Matter, be stayed until the Court decides this Motion. In addition, Respondents note that Appellant did not serve his Initial Brief and Designation of Matter on appellate counsel, (Att. A), who noticed their appearance in this matter on January 31, 2014. Respondents request that the Court order Appellant to serve all pleadings and correspondence concerning this appeal with undersigned appellate counsel.

CONCLUSION

For the reasons stated herein, Respondents move this Court to strike all non-record material from Appellant's Designation and Initial Brief, and to order Appellant to clarify his Designation regarding items that are insufficiently identified therein. In addition, Respondents request this Court to order Appellant to revise his Initial Brief and/or Designation so that all record material he intends to cite to in his Initial Brief is properly designated for the appellate Record in this case. Respondents also request that this Court order Appellant to provide Respondents with certain materials that he has designated that are not contained in our files. Finally, Respondents request that the briefing schedule be stayed while the Court considers this Motion and that Appellant be directed to serve all pleadings and correspondence concerning this appeal on the undersigned.

May 20, 2014

McANGUS GOUDELOCK & COURIE, L.L.C.



Weston Adams, III
S.C. Bar No.: 64291
Meridian 10th Floor
1320 Main Street
P.O. Box 12519
Columbia, South Carolina 29211-2519
(803) 779-2300

Helen F. Hiser
S.C. Bar No.: 76124
735 Johnnie Dodds Blvd., Suite 200
P.O. Box 650007
Mount Pleasant, South Carolina 29465
(843) 576-2900
Attorneys for Respondents

Att. A

JOHN C. MCDANIEL

1387 Camp Road, Unit C, Charleston SC 29412
Phone Number: 843-425-3000
Email: jmcDaniel1982@gmail.com

March 11, 2014

Jenny Abbott Kitchings
SC Court of Appeals
Clerk of Court
P.O. Box 11629
Columbia, SC 29211

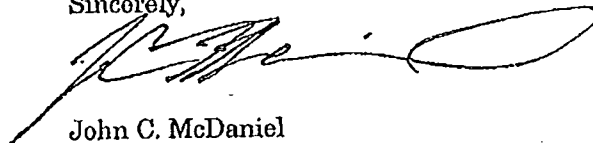
RE: John C. McDaniel v. Career Employment Professional d/b/a Snelling Staffing
DOI: 11/21/2011
WCC File: 1116275
Appellant Case No: 2014-000186

Dear Ms. Kitchings,

Enclosed for filing, please find an original and two (2) copies of Appellant's Initial Brief and Proof of Service. At your earliest conveniences please file the originals and return the file-stamped copies in the enclosed, self-addressed, stamped envelope.

Please call me if you have any questions about the enclosed. Thank you for your time.

Sincerely,



John C. McDaniel

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM South Carolina
Workers Compensation Commission

Full Commission Order Dated December 19, 2013 Affirming
Commissioner Melody L. James orders dated
January 04, 2013 And September 30, 2013

Case No.: 2014-000186

John C. McDaniel.....Appellant,

v.

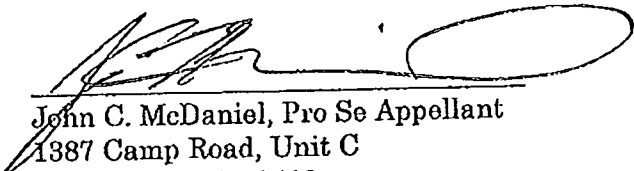
Snelling Staffing Services and United Wisconsin Insurance
Company c/o United Heartland Respondents.

PROOF OF SERVICE

I certify that I have served Appellant's Initial Brief by depositing a copy in
the U.S. Mail, postage paid on March 11, 2014 addressed to the below:

R. Mark Davis
Alison Nussbaum
McAngus Goudelock & Courie, LLC
735 Johnnie Dodds Blvd., Suite 200
Mt. Pleasant, SC 29465

S.C. Workers Compensation Commission
PO Box 1715
Columbia, SC 29292-1715


John C. McDaniel, Pro Se Appellant
1387 Camp Road, Unit C
Charleston, SC 29412
843-425-3000
Jmcdaniel1982@gmail.com

March 11, 2014

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM THE SC WORKERS COMPENSATION COMMISSION

Full Commission Order Dated December 19, 2013 Affirming Commissioner Melody L. James
orders dated January 04, 2013 And September 30, 2013

Case No: 2014-000186

John McDaniel, Employee, Appellant

v.

Career Employment Professional D/B/A Snelling Staffing, Employer and United Wisconsin
Insurance Co., Carrier, Respondents

INITIAL BRIEF OF APPELLANT

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XI DID THE COMMISSION ERR IN FAILING TO APPLY PENALTIES AND/OR SANCTIONS AGAINST THE RESPONDENTS?

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STATEMENT OF ISSUES ON APPEAL

- I DID THE COMMISSION ERR IN FAILING TO ACCEPT APPELLANTS AMENDED FORM 30?
- II DID THE COMMISSION ERR IN THE DETERMINATION OF APPELLANT'S DISABILITY?
- III DID THE COMMISSION ERR IN FAILING TO COMPENSATE THE APPELLANT FOR LOSS OF A LICENSE DUE TO DISABILITY AND LOSS OF EARNING CAPACITY?
- IV DID THE COMMISSION ERRED IN DETERMINING THE APPELLANT'S DISABILITY UNDER SCHEDULED LOSS; THE ERROR BEING THAT ONLY WHEN INJURY IS CONFINED TO A SCHEDULED MEMBER AND THERE IS NO IMPAIRMENT OF ANY OTHER PART OF THE BODY IS A SCHEDULED LOSS WARRANTED.
- V DID THE COMMISSION ERR IN FINDING THAT THE RESPONDENTS SHOULD RECEIVE A CREDIT FOR ALL WEEKLY BENEFITS PAID AFTER THE DATE OF MMI PURSUANT TO *CURIEL*?
- VI DID THE COMMISSION ERR IN FINDING THAT MAXIMUM MEDICAL IMPROVEMENT AS OF AUGUST 13, 2012 WAS SUPPORTED BY SUBSTANTIAL EVIDENCE?
- VII DID THE COMMISSION ERR IN THE DETERMINATION OF THE METHOD TO BE USED TO CALCULATE AVERAGE WEEKLY WAGE?
- VIII DID THE COMMISSION ERR IN FINDING THAT THERE WAS SUBSTANTIAL EVIDENCE THAT THE APPELLANT WOULD NOT CONTINUE WORKING AT ALSIDE REVERE?
- IX IS THE GUARANTEE OF CONTINUED EMPLOYMENT RELEVANT TO RECOVER UNDER TITLE 42?
- X DID THE COMMISSION ERR IN FINDING THAT THE WAGES OF THE APPELLANT, ATKINS, LAMPKIN AND CLARK WERE RESPECTIVELY \$492.85; \$506.88; \$618.50 AND \$533.41; THE ERROR BEING ALL THE WAGE CALCULATIONS INCLUDED PARTIAL WEEKS AS FULL WEEKS AND ARE NOT CORRECTLY CALCULATED UNDER THE DEFINITION OF AVERAGE WEEKLY WAGE.
- XI DID THE COMMISSION ERR IN FAILING TO APPLY PENALTIES AND/OR SANCTIONS AGAINST THE RESPONDENTS?
- XII DID THE COMMISSION VIOLATE THE APPELLANTS RIGHT TO DUE PROCESS AND/OR THE RIGHT TO EQUAL PROTECTION?

Statement of the Case

This is a Workers Compensation case in which the Appellant was injured on November 21, 2011 while working through a professional staffing agency for a building supply company. The Appellant's foot was crushed by a 9,000 pound forklift while working in the warehouse. On November 28, 2012 a hearing was held with the Single Commissioner to determine the issues on the Form 50 (ROA____ (Form 50)). The Single Commissioner issued her decision and order on January 4, 2013 (ROA____ (Order)). The Appellant filed a Form 30 Appealing this order (ROA____ (Form 30)). Appellant filed a Motion for Additional Evidence to Complete the Record, Motion for Additional Testimony to Complete the Record and a Motion to Enforce Penalties after the first hearing, which were denied by the judicial committee. (ROA____ Motions) Appellant's former attorney filed a Motion for Additional and Newly Discovered Evidence pursuant to 67-707. (ROA____ (Motion)) This motion was granted by the Judicial Committee. On April 15, 2013 Appellant objected to the way in which the Motion was granted. (ROA____ (Email)). The Commission granted the objection of the Appellant, which asked for remittance of the file to the Single Commissioner as outlined in 67-707. A remand hearing was held on July 8, 2013. At the remand hearing the Appellant attempted to submit records, enforce subpoena upon parties to appear, enforce compliance with records subpoenas, compel medical treatment and submit deposition testimony. (ROA____ (6/8/13 Transcript)) On August 6, 2013 the Single Commissioner issued a request for proposed order and directives. (ROA____ (Request for Proposed Order)). On August 30, 2013 Appellant submitted Proposed Findings of Facts for this Order. (ROA____ Email w/ attachment). On September 30, 2013 the Single Commissioner issued her Order from the remand hearing. (ROA____ (Order dated 9/10/2013)). This Order did not contain a ruling on Appellants proposed Findings of Fact. On October 3, 2013 the Appellant received Notice of Appellant Hearing. (ROA____ Notice of Appellant Hearing)). On October 4, 2013 the Appellant informed the Commission that he was not in receipt of the Order from the remand hearing and had conversation with the Judicial Director regarding the bifurcation of Appellant's case. (ROA____ (Emails & Tape Recordings)). Later on October 4, 2013 Appellant received the Decision and Order dated September 30, 2013 via Certified Mail.

On October 9, 2013 Appellant submitted an Amended Form 30 (ROA_____ (Email w/ attachments)). The Full Commission Panel Hearing was held on October 14, 2013. At this hearing Commissioner Barden stated that the Appellant's Amended Form 30 was in front of the Full Commission Panel. (ROA_____ (Transcript 10/14/2013 pg. 5)). At this hearing, the Appellant attempted to submit evidence and enforce subpoenas requiring parties to attend the hearing. (ROA_____ (Transcript 10/14/2013 pgs. 3-6, 10-11)). On December 2, 2013, Appellant submitted proposed findings of fact to be ruled on by the full commission. (ROA_____ (Email)). Appellant objected to Respondents being charged to author the full commission decision and order. On December 16, 2013 Appellant notified the Commission that the Respondents proposed order contained errors and misrepresentations of the case. On December 19, 2013 the commission signed and filed the Decision and Order. The remand hearing (July 8, 2013) is not reflected and/or referenced in the Decision and Order dated Dec. 19, 2013.

ARGUMENT

1) DID THE COMMISSION ERR IN FAILING TO ACCEPT APPELLANTS AMENDED FORM 30?

§42-17-50 "If an application for review is made to the commission within fourteen days from the date when notice of the award shall have been given, the Commission shall review the award"

"An abuse of discretion occurs when the ruling is based on an error of law or a factual conclusion that is without evidentiary support." Fields v. Reg'l. Med. Ctr. Orangeburg, (2005) 363 S.C. 248, 609 S.E.2d 506 "The Workmen's compensation act is remedial legislation which is entitled to a liberal construction to accomplish the ends and purposes for which it was enacted." Flemon v. Dickert-Keowee, Inc. (1972) 259 S.C. 99, 190 S.E.2d 751

1) Does the appellant have the right to amend forms and/or pleadings after a remand hearing?

R.67-211 C.(2) "When the claimant does not serve the form or document, the Commission will serve it by depositing the form or document in the United States Postal Service first class postage, addressed to the opposing parties per R.67-210."

The remand hearing was held July 8, 2013 pursuant to R. 67-707 which states that the evidence must be sufficient for a new trial. At this hearing additional testimony was offered and wage records of Jared Lampkin were entered into the record as APA's. On October 3, 2013 Appellant received via U.S. mail "Notice of Appellate Review" setting a full commission review hearing for October 14, 2013. On October 4, 2013 at 3:52 pm Appellant received via Certified Mail both the Decision and Order from the July 8, 2013 remand hearing and the "Notice for

appellate review.” On October 9, 2013 Appellant delivered to the Commission the “Amended Form 30” via Email.

2) Did the Appellant err in not timely serving the amended form 30?

R.67-701 A.” The Commission will not accept for filing a Form 30 that is not postmarked or delivered to the Commission by the fourteenth day from the date of receipt of the hearing Commissioner’s order.” R.67-701 B. states for pro se claimants “the judicial department will prepare the additional copies of the Form 30 and serve the Form 30 on the opposing party.” R.67-701 B. places the duty of service of the Form 30 with the Commission. The Commission was provided with the Amended Form 30 within five (5) days of the receipt of the Decision and Order from the (July 8, 2013) remand hearing. The Full Commission review was held on the tenth (10th) day after receipt of the remand order by the Appellant. This is within the jurisdictional time limit for filing a request for full commission review. To disallow the Appellant the right of review is beyond the scope and latitude of the Commission’s discretion, is based on error of law and substantially prejudices the appellant.

3) Is the Commission barred from retroactively excluding the Amended Form 30?

R.67-708 “A review hearing may be postponed for the reasons in R.67-613.” R.67-613 B.(4) “If the nature of the claim or the relief requested changes, file a new hearing request according to R.67-207 unless R.67-610 applies.” R.67-610 C. “An amended form must be timely filed and served. The Commission will determine at the hearing whether to allow a party to rely on new facts or defenses.” § 1-23-320 (E) “Opportunity must be afforded all parties to respond and present evidence and argument on all issue involved.”

At the remand hearing the Appellant was notified by the Full Commission Panel that "We have that [amended form 30] in front of us, yes, sir."(ROA _____ Oct 14, 2013 Transcript p.5:15-19) The Appellant relied on this statement as an express declaration that the Form 30 would be considered and the facts would be allowed. On Dec. 19, 2013 the commission signed an order stating "the Form 30 was not timely served, so no documents outside the record were considered."

To allow the Commission to exclude facts and/or forms after the hearing, that were relied on during the hearing is highly prejudicial to the Appellant, by not allowing him to present argument on all issues involved. If the commission had informed the Appellant that the Amended Form 30 was not before the panel, an argument could have been mounted to convince the panel that in the interest of justice the Amended Form 30 should be allowed. When the commission determines that the new facts and defenses can be relied on, they, in accordance with R.67-610 (C), must be bound by that decision.

II) DID THE COMMISSION ERR IN THE DETERMINATION OF APPELLANT'S DISABILITY?

Outlaw v. Johnson Services Co. (S.C. 1970) 254 S.C 486, 176 S.E.2d 152. "the loss of earning capacity alone is the criterion for compensation under the Act." Coleman v. Quality Concrete Products, Inc. (1965) 245 S.C. 626, 142 S.2d 43. "Total disability does not require complete helplessness. Inability to perform common labor is total disability for one who is not qualified by training or experience for any other employment"

Did the Commission err in finding the Appellant has a disability to the left leg of thirty-four percent (34%); the error being that the Appellant's loss of use and disability greatly

exceeded this amount based upon the permanent vocational impact and the Appellant's decrease in earning capacity?

The Appellant was released to sedentary work with restrictions. Prior to the Appellant's injury he was performing Heavy work and all the Appellant's past job experience would constitute light work to heavy work according to the US Department of Labor, Dictionary of Occupational Titles (4th Ed., Rev. 1991 -- APPENDIX C.) Appellant is permanently restricted to working in "less than sedentary" jobs according to the appendix. Appellant is restricted to lifting no more than 10 pounds (ROA _____ Form 14-b). Appellant is restricted to no more than 1 hour standing in an 8 hour day (Form 14-b). Appellant has to take multiple medications for pain. (ROA _____)

Peoples v. Henry Co., (2005) 364 S.C. 123, 611 S.E.2d 527 " He takes medication, but his leg remains swollen and painful. He now has difficulty walking and standing for long periods of time. Peoples stated that he is unable to participate in sports, cannot lift heavy objects, and climbs stairs with difficulty. The single commissioner held that Peoples had undergone a sixty-eight percent permanent partial disability to his right lower extremity and awarded benefits accordingly." "The sine qua non of an equal protection claim is a showing that similarly situated persons received disparate treatment." Grant v. S.C. Coastal Council, 319 S.C. 348, 354, 461 S.E.2d 388, 391 (1995)

An award of 34% to the leg is arbitrary and not supported by substantial evidence. Peoples had difficulty walking or standing for long periods of time, was able to return to his previous position, walked with a limp but did not rely on an assistive device to walk and estimated his loss to be seventy percent (70%). In contrast, the Appellant has lost his license on

which his employment was based, has been unable to return to work since reaching MMI, has trouble standing and walking for short periods of time, walks with a limp, relies on a cane and has a total vocational loss. The inability to work in even the lowest physical qualification class equates to a total loss of earning capacity for the Appellant.

III) DID THE COMMISSION ERR IN FAILING TO COMPENSATE THE APPELLANT FOR LOSS OF A LICENSE DUE TO DISABILITY AND LOSS OF EARNING CAPACITY?

Pursuant to the US Department of Transportation, 49 CFR Part 391.41(b)(2) states that a person is physically qualified for a Commercial Drivers Licenses if that person has no impairment of an arm, foot or leg, or any other significant limb defect. Due to the Appellant's injury, impairment and his physical restrictions, the Appellant is no longer able to utilize his class A CDL. The primary qualification depended upon by Snelling to staff the Appellant was his Class A Commercial Drivers Licenses. (ROA ____ (Exhibit to Motion bate #127) Since the Appellant's injury, the Appellant has attempted to be hired for multiple positions that do not require a CDL and fit within the Appellant's work restrictions. (ROA _____ Exhibit to Motion bate #166-195) This equates to a loss of earning capacity for the Appellant. Therefore, the loss of the Appellant's Class A CDL Drivers Licenses should be compensated for under Title 42.

IV) DID THE COMMISSION ERR IN DETERMINING THE APPELLANT'S DISABILITY UNDER §42-9-30; THE ERROR BEING THAT ONLY WHEN INJURY IS CONFINED TO A SCHEDULED MEMBER AND THERE IS NO IMPAIRMENT OF ANY OTHER PART OF THE BODY IS A SCHEDULED LOSS WARRANTED.

Pursuant to *Lee v. Harborside Café* (S.C. App. 2002) 350 S.C. 74, 564 S.E.2d 354 which states that claimant may proceed under either Workers Compensation Act's general disability

section in order to maximize recovery and only when schedule loss is not accompanied by additional complications affecting other parts is scheduled loss exclusive, the Commissioner should have awarded disability compensation under 42-9-10 and/or 42-9-20. The single commissioner awarded for permanent loss of use of leg and toes. However, complications include but are not limited to:

- 1) Dependence on a walking device,
- 2) Loss of use of sural nerve (Ohlson 8/13/12),
- 3) Loss of use of superficial paraneal nerve (Ohlson 8/13/12),
- 4) Loss of use of lesser MTP joints (Ohlson 8/13/12),
- 5) Loss of use of skin (6 months for a wound to close),
- 6) Loss of use of vascular system,
- 7) Loss of use of nervous system (dysthesias, Ohlson 8/13/12),
- 8) Loss of use of bone density (diffuse osteopenia),
- 9) Ankylosed position of the toe (5th toe),
- 10) Hammertoe deformation (2nd-5th toes),
- 11) Disfigurement of foot (large scar),
- 12) Severe antalgic gate,
- 13) Continued medical care to correct flat foot deformity and pes planus (orthopedic shoe inserts),
- 14) Likely future surgery,
- 15) Weight gain and muscle loss/atrophy,
- 16) Permanent work restrictions,

17) Lack of congruity in medical opinions (due to the need for multiple specialists in different fields).

The Appellant has multiple complications affecting other parts of the body and thus scheduled recovery is NOT exclusive. Therefore the Commission erred in strictly construing 42-9-30.

In conclusion, due to restrictions, work qualifications, education level, medical complications, injury to multiple scheduled loss body parts as well as non-scheduled body parts, impairment rating of multiple scheduled loss body parts and other applicable factors, the Appellant should receive general disability under permanent total disability or partial disability under 42-9-10 or 42-9-20 and/or a finding of total and permanent disability under 42-9-30.

V) DID THE COMMISSION ERR IN FINDING THAT THE RESPONDENTS SHOULD RECEIVE A CREDIT FOR ALL WEEKLY BENEFITS PAID AFTER THE DATE OF MMI PURSUANT TO *CURIEL*?

Curriel v. Environmental Services Inc., (2007) 376 S.C. 23, 655 S.E.2d 482 "Appellant was not entitled to Temporary total benefits because Appellant had exaggerated the degree of his vision loss. The commission found: Had the Appellant been honest with his physicians concerning the sight in his right eye, a corrective lens could have been provided, and the Appellant could have worked."

The Commissioner erred in the application of *Curriel v. Environmental Management Services*. In *Curriel*, the Appellant failed to cooperate with his physician which resulted in his inability to return to work. Thus, the award was based on his earning capacity.

Commissioner James (ROA____ Nov. 28, 2012 p.6:8-21)"My understanding of the decision of *Curiel* is at the date of maximum medical improvement, whatever that date is, that that is the date the temporary total and/or temporary partial has to stop."

The Commissioner's understanding of *Curiel* amounts to an error of law. To award the carrier a credit based on the understanding that any payments of support MUST be credited to the carrier supplants the legislative intent of the Act.

Outlaw v. Johnson Services Co., "the loss of earning capacity alone is the criterion for compensation under the Act."

Fields v. Reg'l. Med. Ctr. Orangeburg, (2005) 363 S.C. 248, 609 S.E.2d 506, "An abuse of discretion occurs when the ruling is based on an error of law or a factual conclusion that is without evidentiary support."

Svinton v. South Carolina Dept. of Mental Health (S.C. App. 1994), 314 S.C. 202, which states that since the finding of MMI did not establish the Appellant was no longer disabled, disability was presumed to continue.

Smith v. Daniel Construction Co., (1969) 253 S.C. 248, 169 S.E.2d

State v. Williams, 13 S.C. 546, "When the court is asked to follow the line marked out by a single precedent case, it is not at liberty to place its decision on the rule of stare decisis alone, without regard to the grounds on which the antecedent case was adjudicated." *Daughy v. Northwestern R. Co. of S.C.* (1912) 92 S.C. 361, 75 S.E. 553, "The doctrine of stare decisis should not stand in the way. That doctrine has no application, where there is conflict in the decisions of the court. In that event the court is at liberty to adopt those decisions which are

sound in principle and in accord with right and justice and the statute law, and, overrule those which are contrary thereto." "This Court has always attached great importance to the doctrine of stare decisis, both out of respect for the opinions of our predecessors and because it promotes stability in the law and uniformity in its application." Bulova Watch Company, Inc. v. Brand Distributors of North Wilkesboro, Inc., (1974) 285 N.C. 467, 206 S.E.2d 141. "Nonetheless, stare decisis will not be applied when it results in perpetuation of error or grievous wrong," State v. Ballance, (1949) 229 N.C. 764, 51 S.E.2d 731," since the compulsion of the doctrine is, in reality, moral and intellectual, rather than arbitrary and inflexible." Spitzer & Co. v. Commissioners of Franklin County, (1924) 188 N.C. 30, 123 S.E. 636

In summary, *Curiel* is off-point with the current case in the following ways: (1) no evidence exists, nor has the defense asserted that the appellant has been dishonest with his physicians. (2) No substantial corrective treatment exists for the appellant's injury that would instantly return him to work. (3) It is disability resulting from injury that has precluded him from employment.

In conclusion, where the only reason given for an award is based on error of law, that award must not be upheld. *Curiel* did not have the effect of overturning *Svinton*. The Appellants disability was presumed to continue. This presumption was not rebutted. The credit must not be awarded to the carrier in this case.

VI) DID THE COMMISSION ERR IN FINDING THAT MAXIMUM MEDICAL IMPROVEMENT AS OF AUGUST 13, 2012 WAS SUPPORTED BY SUBSTANTIAL EVIDENCE?

The term "maximum medical improvement" means a person has reached such a plateau that, in the physician's opinion, no further medical care or treatment will lessen the period of impairment. Hall v. United Rentals, Inc., 371 S.C. 69, 89, 636 S.E.2d 876, 887 (Cl.App.2006) Cagle v. Clinton Cotton Mills (1949) 216 S.C. 93, 56 S.E.2d 747. Dukes v. Daniel Const. Co. (SC 1974) 262 SC 98, where the commission found that further medical care was necessary and should be furnished, implicit in such award is the finding that additional medical treatment will tend to lessen the period of disability, for on no other grounds could liability for additional treatment be based under 42-15-60.

The Appellant reached maximum medical improvement according to Dr. Ohlson "from an orthopedic standpoint" on Aug. 13, 2012 but stated appellant would need further treatment (ROA____APA p.21-55), Dr. Brilliant opined that Appellant could still be up to a year away from MMI (ROA____APA p.59-60), Dr. Tavel found Appellant to be at MMI on July 22, 2013 (ROA____APA p.340-351), and Dr. Gudas judged MMI to be premature (ROA____APA p.56-58).

VII) DID THE COMMISSION ERR IN THE DETERMINATION OF THE METHOD TO BE USED TO CALCULATE AVERAGE WEEKLY WAGE?

The Commission erred in finding that a fair and just method to calculate the wages of the Appellant was to take an average of his wages from a previous job along with the three other employee wages provided; the error being that it was not fair and just to the Appellant as it did not reflect the earnings of the injured employee and the error being that the amount that should have been used should be the actual earnings in the employment at time of injury with the ultimate objective being to fairly reflect the Appellant's probable future earnings.

The appellate relies heavily on *Sellers v. Pinedale Residential Center* (S.C.App. 2002) 350 S.C. 183. "The disability of a workers compensation claimant reaches into the future, not the past; his loss as a result of injury must be thought of in terms of its impact on probable future earnings, for the purposes of calculating the claimant's average weekly wage." "The workers compensation statute, which sets forth several different methods for calculating the claimant's AWW, provides an elasticity or flexibility with a view towards always achieving the ultimate objective of reflecting fairly a claimant's probable future earnings loss."

1) Did the commission err in relying on a Form 20 from a different "employment?"

Whether or not an employer-employee relationship exists within the meaning of the workers compensation law is a jurisdictional question for which the reviewing court can take its own view by a preponderance of the evidence." *Collins v. Charlotte* (S.C.App. 2012) 2012 WL 3323345,"

"Unless claimant knew of and agreed to a new employer-employee relationship replacing the one theretofore existing, his rights under the Workman's Compensation Act against his regular employer were unbridged." *Chavis v. Watkins* (S.C. 1971) 256 S.C. 409

On May 13, 2011 the Appellant became initially employed with Snelling Staffing working with Ben Arnold. The pay rate for this employment was \$11.50/hr. This employment was Tuesday thru Friday with an arrival time of approximately 6:00 am and a departure time varying from noon till 8:00 pm. This job required a Class B CDL (commercial driver's license). This job required constant lifting up to 50lbs, driving a class B vehicle, minimal warehouse work, delivery, stocking and merchandising of beer and wine to various locations for Ben Arnold.

When this employment ended there was no guarantee of future employment, no timetable given for return and for all intents and purposes the appellant was no longer employed.

Unless claimant knew of and agreed to a new employer-employee relationship replacing the one theretofore existing, his rights under the Workman's Compensation Act against his regular employer were unabridged. Chavis v. Watkins (S.C. 1971) 256 S.C. 409

On November 11, 2011 the appellant entered into a subsequent employee/employer relationship with Snelling Staffing to work for Alside Revere. This employment was for a construction distribution company. The pay rate for this employment was \$13/hr. This position was for Monday thru Friday work from 7:00 am till 4:00 pm with the understanding that there would be regular overtime. Requirements for employment involved possessing a Class A CDL and the ability to lift over 50 lbs constantly. This job included several hours of warehouse work daily and irregular delivery routes, twice a week going within 5 miles of the Georgia border.

To base AWW on wages from a previous employment, that included lower wages, a different scope of work, in a different industry, with different hours, needing a different license with less dangerous conditions does not comply with §42-1-40 which states AWW must be determined "in the employment working at the time of injury" and warrants reversal. Due to the fact that disability reaches into the future and not the past, loss must be calculated upon probable future earnings.

Jared Lampkin's earnings most accurately reflect what the appellant would be earning were it not for the injury.

On Nov. 22, 2011, Jared Lampkin replaced the Appellant at Alside Revere. Lampkin was the only person to work this job for the following year. Taking into account pay records from

Alside Revere and Snelling, The period from Nov. 22, 2011 to Nov. 10, 2012 included forty-nine (49) full weeks and two (2) partial weeks. During this period Lampkin earned wages equal to \$36,544.61.

Lampkin's AWW excluding the partial weeks are equal to:

$(\text{Total wages} - \text{partial week wages}) / \text{full weeks worked} = \text{AWW}$ or $(\$36,544.61 - \$916.50) / 49 \text{ full weeks} = \727.10

In conclusion, AWW should reflect probable future earnings which in this case would be a minimum of \$727.10 a week.

VIII) DID THE COMMISSION ERR IN FINDING THAT THERE WAS SUBSTANTIAL EVIDENCE THAT THE APPELLANT WOULD NOT CONTINUE WORKING AT ALSIDE REVERE?

Appellant testified "Dan Cobb said they liked my work and that if I was on board, that he would like to hire me.(ROA____ Nov. 28, 2011 Transcript p.24:1-2)" I was looking for long term stability so I could finish school.(ROA____ Nov. 28, 2011 Transcript p.24:13-14)" "They [snelling] try to put you with someone that would be a good long term fit for you to be hired on for (ROA____ Nov. 28, 2011 Transcript p.44:24-45:1)" "Snelling does not take you on a daily basis to go to different places. They are – their mission is to place people to be hired on at companies rather than filling day labor needs.(ROA____ Nov. 28, 2011 Transcript p.43:7-11)" "me and Dan Cobb had had a conversation regarding... bring me on before the 550 hours because its an exhorbanant cost for the company to outlay for the staffing agency.(ROA____ Nov. 28, 2011 Transcript p.49:21-25)" "Alside Revere did try to re-employ me simply as a driver

until I was healed enough to take over full duties again...I believe that would speak to their intent of wanting to hire me.(ROA ____ Nov. 28, 2011 Transcript p.50:19-51:1)"

Dan Cobb Testified that ultimately he would make the final (hiring) decision (Cobb Deposition p.7) "We brought him on to be full time (pg.10.)" "would receive at least 40 hours a week (pg.10.)" "he was the only one" employed to make deliveries (pg.11.) "that he [appellant] was working out" and had performed "so far so good (pg.12.)" That "It's a permanent position" and "No, it's permanent (pg.16.)" "He was a very good employee. He did very well in the limited time he was there (pg.13.)" That there was overtime ranging from two (2) to ten (10) hours of overtime a week." "If he worked out we would make him a permanent employee" and "If they do well that is my intention."

In conclusion, no substantial evidence exists to conclude that the Appellant would not have continued his assignment at Alside Revere.

IX) IS THE GUARANTEE OF CONTINUED EMPLOYMENT RELEVANT TO RECOVER UNDER TITLE 42?

South Carolina is an at-will employment state. *Prescott v. Farmers Telephone Cooperative, Inc.*, (1999) 335 S.C. 330, 516 S.E.2d 923 "A contract for permanent employment, ...is terminable by either party. At-will employment is generally terminable by either party at any time, for any reason or for no reason at all."

To lower the AWW in this case, on this basis, would substantially prejudice the rights of the Appellant. 42-1-160 defines injury, and includes a non-inclusive list (42-1-160 (C)) of "events which are incidental to normal employer/employee relations including but not limited

to...terminations..." Any reference to what "might" have happened would be based on speculation, conjecture or surmise, and no award shall be based on speculation, conjecture or surmise.

In conclusion, there is no basis for the applicability of whether or not employment was guaranteed as consideration of guarantees are not accounted for under S.C. Code Ann. (1976) Title §42.

X DID THE COMMISSION ERR IN FINDING THAT THE WAGES OF THE APPELLANT, ATKINS, LAMPKIN AND CLARK WERE RESPECTIVELY \$492.85; \$506.88; \$618.50 AND \$533.41; THE ERROR BEING ALL THE WAGE CALCULATIONS INCLUDED PARTIAL WEEKS AS FULL WEEKS AND ARE NOT CORRECTLY CALCULATED UNDER THE DEFINITION OF AVERAGE WEEKLY WAGE.

In Accordance with §42-1-40 If the time worked does not exceed 52 weeks the proper method to calculate AWW is to take earnings and divide them by actual number of weeks worked and *parts thereof*. The commission did not calculate the AWW in accordance with §42-1-40 in the following instances:

The 20 weeks used to determine the Appellant's average weekly wage on the Form 20 was from a different scope of employment with a different statutory employer and improperly accounts for one week which the Appellant did not perform any work and counts all partial weeks as full weeks. The one week and one day the Appellant performed work in the employment in which he was injured was never accounted for.

The combination of the other employees' wages includes Lampkin (13 weeks), Clark (16 weeks) and Atkins (15 weeks) and equals 44 weeks. This is less than 52 weeks in the

employment in which the Appellant was injured. When an employee works less than 52 weeks, weeks *and* parts thereof must be accounted.

Jared Lampkin's Average Weekly Wage while employed through Snelling

Jarod Lampkin's (Lampkin) wage determination does not take into account any partial weeks in accordance with §41-1-40. The result of failing to properly account for partial weeks is prejudicial to the Appellant. Lampkin's average wage was determined by dividing gross pay (\$8,040.52) by number of checks received (13) which equates to \$618.50 (which is equal to approx. 5 hours of overtime per week.) Lampkin worked 78 hours of overtime over 11 full weeks resulting in 7.09 hours of overtime per week on average. Excluding partial weeks Lampkin averaged wages of \$658.25. Lampkin worked a partial week the week ending 11/25/11 (32 hours). Lampkin worked a partial week the week ending 2/17/12 (31 hours)(ROA _____(APA)).

In conclusion, the Commission should not have used \$618.50 for Lampkin's AWW, \$658.25 at the minimum should be utilized as this calculation properly accounts for weeks and parts thereof.

Alvin Clark's Average Weekly Wage

Alvin Clark's (Clark) wage determination does not take into account any partial weeks. This is also a violation of §42-1-40. Clark worked a partial week the week ending 7/29/11 (32 hours worked). Clark worked a partial week ending 11/11/11 (8 hours worked). Both of these weeks are clearly fractional. Clark's average wage accounts both of the above weeks as full weeks. The operational hours of Alside Revere were from 7a.m. till 4p.m. which equals a 45 work week. Allowing for a one hour lunch break daily, Clark worked less than 40 hours on five

other checks (check numbers 195610, 197218, 197725, 199271, 200533). This indicates that these weeks were fractional. Clark's average wage was determined by dividing gross pay (\$8,534.51) by number of checks (16) and equates to \$533.41 (which is equal to less than 2 hours of overtime). Clark worked 50.50 hours of overtime over a 16 week period. This results in an average overtime per week of 3.16 hours or wages of \$581.62 including partial weeks. Excluding the partial weeks results in 50.5 hours over 9 weeks or 5.61 hours of overtime or wages of \$629.40. As an award may not be based upon conjecture, speculation or surmise the fractional weeks or weeks in doubt should be excluded. This results in the \$629.40 of wages to be the most accurate reflection of Clark's earning capacity.

In conclusion, the Commission determining Clark's AWW at \$533.41 instead of \$629.40 is clearly prejudicial to the Appellant and based on error of law.

Wayne Atkins' Average Weekly Wage

The "Employee Pay Summary" for Wayne Atkins indicates week ending 4/8/11 the wages paid were for 8 hours. The above referenced check (check # 186808) was calculated as a full week in the determination of Atkins average wage. The "Employee Pay Summary" for Wayne Atkins indicates a pay rate of \$8 an hour the last week of his employment (week ending 7/15/11). During the above referenced week Wayne Atkins worked 45 hours (check # 192500). The \$8 an hour wage was levied as a punishment against Atkins for not giving proper notice when he quit. Wayne Atkins average wage determination in regards to the above week relies on gross earnings and not on hours worked multiplied by his normal wage. The result of the above equate to wages his last week of employment equal to \$344.35 (\$8 an hour x 45 hours) instead of his normal pay rate equal to \$606.25 (\$13 an hour x 45 hours). The "Employee Pay Summary"

for Wayne Atkins reflects three additional weeks in which hours worked were less than 40 hours. The above weeks are accounted for in the determination of Wayne Atkins average wage as full weeks. Wayne Atkins average wage was determined by dividing his gross pay (\$7,603.24) by paychecks received (15 checks) resulting in an average wage of \$506.88 (which is equal to less than 40 hours a week at \$13 an hour). Over the period Atkins worked for Alside Revere he earned 35.25 hours of overtime. Excluding the first week Atkins worked 35.25 hours of overtime over a 14 week period which results in an average overtime worked of 2.51 hours per week or a wage of \$568.95.

In conclusion, the Commission determining Clark's AWW at \$506.88 instead of \$568.95 is clearly prejudicial to the Appellant and based on error of law.

The weeks accounted for by the Commission includes, 44 weeks of various statutory employees working in the same employment in which the Appellant was injured (Alside Revere) and 20 weeks, 19 of which the Appellant actually performed work, in a different scope of employment for a different statutory employer (Ben Arnold). The calculations used do not take into consideration any partial weeks and includes weeks in which work was not performed.

XI) DID THE COMMISSION ERR IN FAILING TO APPLY PENALTIES AND/OR SANCTIONS AND/OR AN INCREASE OF COMPENSATION AGAINST THE RESPONDENTS?

1) Is the Appellant due penalties and/or sanctions and/or an increase in compensation?

The Commission erred in failing to find that the Respondents should be subject to fines and penalties for late payments of Temporary Total Disability and Temporary Partial Disability

Benefits; the error being that the record reflects payments were made at least 14 days after they were due, the records reflect that Respondent's failed to make timely payments on multiple occasions and the fine is mandated by §42-9-90.

The first check paid to claimant has a received date stamp on it reflecting it was received 12/27/11, this is over one month after claimants injury 11/21/11. There is no record of payment of the mandatory increase in compensation of 10% for the period of benefits from 11/22/11 till 12/02/11. There were multiple occasions of late payments (ROA____(APA p.91-109)) No increase in compensation or penalties or fines were applied to these late payments, as mandated, and this is prejudicial to the Appellant.

The Commission err in failing to find Respondents be subject to fines and penalties for not authorizing Appellant's treating physicians' prescribed medical care and not authorizing treating physicians' medical care in a timely manner; the error being that the record reflects the Appellant did not receive all treatment and did not receive all treatment in a timely manner and the motion for penalties should have been granted.

Dr. Olson initially recommended and prescribed Physical Therapy on 1/9/12. Claimant's first visit to Physical Therapy was on 2/27/13. Dr. Olson initially recommended and prescribed wound debridement/therapy on 1/27/12. Wound care was never approved or provided. The Claimant's recovery was hindered due to the gross delay in approving physical therapy. "Potential barriers to patient's ability to reach maximum rehab potential: delayed attendance to PT" (ROA____RCC report dated 2/27/12) Physical therapy was delayed for a second period from 4/10/12 till 5/1/12. Dr. Olson's reported dated 4/2/2012 states that there is no longer need for wound therapy. Rehabilitation Centers of Charleston's physical therapy notes from 6/26/12

state that the wound is nearly healed. The Claimant's wound remained open at least until 6/26/12 resulting in Dr. Olson not proceeding with surgery as stated in RCC records and Dr. Olson's medical reports. Dr. Olson's report dated 5/14/12 recommends and prescribes Chronic Pain Management. The Claimant attempted to facilitate and receive Chronic Pain Management as prescribed by Dr. Olson. The Claimant first received Chronic Pain Management on 10/30/12. Dr. Ohlson first recommended and prescribed orthotics on 7/2/12, United Heartland delayed approval of this until, on or after, 11/1/12. (ROA_____Motion for penalties) The record contains substantial evidence that the carrier has failed to provide medical care as directed.

To not enforce penalties and/or sanctions against the Respondents for failing to provide medical care as ordered, recommended and prescribed, by the treating physicians encourages carriers to disregard the law. This violation of the simple trade-off of swift medical care and sure compensation for limited liability must not be upheld. To do so would tip the scale of justice away from protecting the injured worker and undermine the concept of workers compensation. In an exclusive recovery setting penalties must be applied as the legislator's intended.

The concept is elementary, if the injured worker endures additional loss and the carrier is responsible for it, additional compensation is due.

2) Is the Commission barred from granting a credit to Respondents if penalties are due?

The commission should have awarded at the minimum the mandatory penalties, thus, an application for suspension of benefits should not have been entertained by the commission on November 28, 2012. Pursuant to 42-9-260 (F) "Further, the commission may not entertain any application to terminate or suspend payments unless and until the employer or carrier is current with all payments due."

XII DID THE COMMISSION VIOLATE THE APPELLANTS RIGHT TO DUE PROCESS AND/OR THE RIGHT TO EQUAL PROTECTION IN THE FOLLOWING WAYS:

The Administrative Procedures Act (APA) requires that, in a contested case, all parties must be afforded the opportunity for a hearing. S.C.Code Ann. § 1-23-320(A) (2005 & Supp. 2011). The APA additionally requires: "Opportunity must be afforded all parties to respond and present evidence and argument on all issues involved." S.C.Code Ann. § 1-23-320(B) (2005 & Supp.2011). Moreover, the APA provides that, in a contested case, "[a]ny party may conduct cross-examination." S.C.Code Ann. § 1-23-330(3) (2005).

Pursuant to *Adams v. HR Allen, Inc.*, (2012) 397 S.C. 652, 726 S.E.2d 9 procedural due process requirements are not technical and the procedures before administrative agencies must provide adequate notice of a hearing, provide adequate opportunity for hearing, afford the right to present evidence and afford the right to cross examine witnesses. *Adams v. HR Allen* further states;

In State v. Mouzon, the South Carolina Supreme Court distinguished between "trial errors, which are subject to harmless error analysis," and "structural defects in the constitution of the trial mechanism, which defy analysis by harmless error standards." 326 S.C. 199, 204, 485 S.E.2d 918, 921 (1997) (quoting *Arizona v. Fulminante*, 499 U.S. 279, 111 S.Ct. 1246, 113 L.Ed.2d 302 (1991)). In *LaSalle Bank Nat'l Ass'n v. Davidson*, the court held that the failure of a judge to attend a mortgage foreclosure proceeding was a structural defect that violated the Appellants' "constitutional guarantee to procedural 658*658 due process." 386 S.C. 276, 277, 688 S.E.2d 121, 121 (2009). There, the court ordered a new trial, stating: "The purported hearing was a nullity, and the resulting order must be vacated. The judge's absence from the

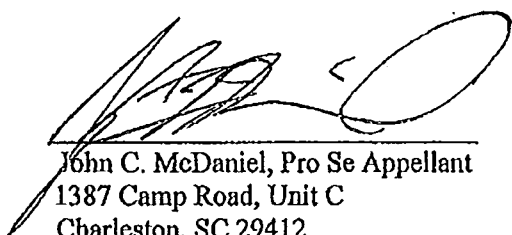
hearing deprived the [Appellants] of the opportunity to be heard and, thus violated their constitutional guarantee of procedural due process." Id. at 281, 688 S.E.2d at 123; see also U.S. v. Marcus, ___ U.S. ___, 130 S.Ct. 2159, 2164, 176 L.Ed.2d 1012 (2010) (stating that "certain errors, termed 'structural errors,' might 'affect substantial rights' regardless of their actual impact on an appellant's trial").

Appellant raised numerous issues related to the procedural handling of his claim which the SC Commission failed to address. (ROA_____ Amended Form 30) (ROA_____ Transcript 10/14/13) (ROA_____ Transcript 7/8/13 p.) (ROA_____ Email &Tape Recording) (ROA_____ Amended Form 30).

CONCLUSION

Title 42 was authored and implemented with the sole purpose to protect the injured worker, the goal of keeping injured workers from becoming charges on society and an exclusive remedy in exchange for swift care and limited compensation. The Appellant is permanently disabled and must be protected by this court.

The Appellant prays that this court will seek justice and uphold the law by: remanding the case back to the South Carolina Workers Compensation Commission for a rehearing with specific instructions to at a minimum; accept the amended form 30, calculate AWW excluding partial weeks and reflect future and not past earnings, to reconsider disability and find no less than 68% to the leg, to apply mandatory penalties and reconsider discretionary penalties, deny the Respondents credit, accept evidence, enter appellants deposition into the record, rule on the Appellants proposed findings of fact, find MMI no earlier than July 22, 2013, or in the alternative, overturn all of the appealed issue and enter an award fair and just to the Appellant, and/or whatever other action the court may deem fair and just.



John C. McDaniel, Pro Se Appellant
1387 Camp Road, Unit C
Charleston, SC 29412
843-425-3000
Jmcdaniel1982@gmail.com

March 11, 2014

Att. B

APPELLATE PANEL
DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO. 1116275

JOHN McDANIEL, EMPLOYEE,

CLAIMANT/APPELLANT,

-v-

CAREER EMPLOYMENT PROFESSIONAL
D/B/A SNELLING STAFFING, EMPLOYER

And

UNITED WISCONSIN INSURANCE CO., CARRIER

DEFENDANTS/RESPONDENT.

AFFIRM

Appellate Panel Review held in Columbia, South Carolina
on October 14, 2013, per notices timely and properly served
on all parties of interest.

Appellate Panel Decision and Order
Filed: 12-19, 2013

APPEARANCES:

Claimant/Appellant:
John McDaniel, appearing pro-se,
of Charleston, South Carolina

Defendants/Respondent:
Represented by Allison C. Nussbaum, Esquire
of McAngus, Goudelock, & Courie, LLC
of Mt. Pleasant, South Carolina

STATEMENT OF THE CASE

Initially, a hearing was held before the Honorable Melody L. James on November 28, 2012, in Summerville, South Carolina. On January 4, 2013, Commissioner James issued the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. The parties to the proceedings are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act. This finding is based upon the stipulations and admissions of the parties.
2. Claimant's applicable compensation rate is \$358.62 based upon an average weekly wage of \$537.91. The Claimant's twenty weeks of work is insufficient to base his average weekly wage, especially in light of his assignment and wages changing. However, there is no guarantee he would have continued with the assignment at Alside Revere (Testimony of Dan Cobb by way of Deposition). Employer provides temporary assignments with a goal of permanent placement. The third employee wages submitted do not provide for fifty-two weeks and they were all employed by Alside Revere. A fair and just method to calculate the wages of the Claimant is to take an average of the wages along with a three other employee wages provided. The Claimant--\$492.85; Atkins--\$506.88; Lampkin--\$618.50; and Clark--\$533.41.
3. On November 21, 2011 the Claimant suffered an injury by accident which arose out of and occurred during the course and scope of his employment to his left leg/foot and toes. The Claimant has received medical care and reached maximum medical improvement as of August 13, 2012.
4. The Claimant has a disability to the left leg of 34%.

5. The Defendants will receive a credit for all weekly benefits paid after the date of maximum medical improvement (August 13, 2012) pursuant to *Curiel v. Environmental Management Services, 376 S.C. 23, 655 S.E.2d 482 (2007).*
6. Claimant will be entitled to future medical care and treatment as indicated by Dr. Ohlson in his report of August 13, 2012, to include future surgery that will more likely than not be required on the maligned and anklyosis position of the fifth toe. Claimant will also require extra wide shoes. He will need Celebrex. He has been referred to Dr. Nancy Lembo for pain management and Defendants have authorized Dr. Tavel, whom the Claimant shall be allowed to continue to see.

CONCLUSIONS OF LAW

1. Pursuant to §42-1-130 and §42-1-140, at the time of the accident the Claimant and Defendant/Employer were covered parties under the provisions of the South Carolina Workers' Compensation Act.
2. Under §42-1-160, the Claimant suffered a compensable injury by accident arising out of and in the course and scope of his employment.
3. Pursuant to §42-1-40, the average weekly wage is defined. The Claimant is determined to have an average weekly wage of \$537.91 and a compensation rate of \$358.62.
4. Pursuant to §42-15-60 the Defendants are responsible for payment to medical providers of the medical expenses incurred by Claimant for treatment of his injury. The Claimant will be entitled to future medical care as directed and suggested by his authorized treating physician, Dr. Ohlson, to include pain management.

5. Pursuant to §42-9-10 the Claimant is entitled to compensation for a period of temporary total disability benefits.
6. Pursuant to §42-9-30, the Claimant is entitled to compensation for a specific permanent partial disability of 34% to the leg.

ORDER

Based upon the above Findings of Fact and Conclusions of Law, Commissioner James issued the following Order:

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that the Claimant has a compensable injury of November 21, 2011 to his left leg and reached maximum medical improvement on August 13, 2012; and

IT IS FURTHER ORDERED that the Claimant has an average weekly wage of \$537.91 and a compensation rate of \$358.62 and Defendants shall pay the Claimant for the underpayment of benefits and shall pay for a permanent loss of use and disability to the leg of 34% (66.3 weeks) in a lump sum after deducting a credit for the weekly benefits paid after August 13, 2012; and

IT IS FURTHER ORDERED the Defendants shall provide future medical care with Dr. Ohlson and Dr. Tavel as the authorized treating physicians with that medical care to include the medicals that have been set out by Dr. Ohlson in his medical records and his report of August 13, 2012; and

IT IS SO ORDERED!

Within the statutory period, prior Counsel for the Claimant, Thomas White, filed WCC Form No. 30, Request for Commission Review, setting forth six grounds for review as follows:

1. The Hearing Commissioner erred in Finding of Fact #2 and Conclusion of Law #3 in finding the Claimant had a compensation rate of \$358.62 based upon an average weekly wage of \$537.91; the error being the Single Commissioner should have found the Claimant was entitled to an average weekly wage and compensation rate in an amount not less than \$627.75 with a compensation rate of \$418.91.
2. The Hearing Commissioner erred in Finding as a Fact and Finding of Fact #2 that a fair and just method was to calculate the wages of the Claimant was to take an average of his wages along with the three other employee wages provided; the error being that it was not fair and just to the Claimant as it did not reflect the earnings of the injured employee and the error being that the amount that should have been used should be the actual earnings of the employee with the ultimate objective of reflecting fairly the Claimant's probable future earning loss.
3. The Hearing Commissioner erred in Finding as a Fact and Finding of Fact #2 that the wages of the Claimant, Atkins, Lampkin, and Clark were, respectively, \$492.85, \$506.88, \$618.50, and \$533.41; the error being the wages of the Claimant were based on an incorrectly calculated Form 20 that does not accurately reflect the wages of the Claimant and the wages of the other three individuals included partial weeks and were not correctly calculated under the Definition of Average Weekly Wage.
4. The Hearing Commissioner erred in Finding of Fact #4 and Ruling of Law #6 in finding the Claimant has a disability to the Left Leg of 34%; the error being that the Single Commissioner should have found that the Claimant's loss of use and disability greatly exceeded this amount based upon the residual vocational impact to the Claimant and how disabling the injury actually is.
5. The Hearing Commissioner erred in Finding as a Fact and a Ruling as a Matter of Law in Finding of Fact #5 that the Defendants should receive a credit for all weekly benefits paid after the date of maximum medical improvement and Ruling of Law #5; the error being the Single Commissioner should have found the Defendants were not entitled to a credit as the Claimant had not been able to return to work and no work had been offered although the Claimant was ready and available to attempt to try to come back to work with his employer if they offered work within his restrictions and Claimant had been actively seeking other employment.
6. The Hearing Commissioner erred in failing to find as a fact and ruling as a matter of law that the Defendants should be subject to fines and penalties for the late payments of temporary total disability benefits because those payments were made 14 days after they were due and Defendants failed to make timely payment on multiple occasions.

Additionally, on March 8, 2013, prior Counsel for the Claimant filed a Motion to Admit Additional and Newly Discovered Evidence to include pay records from Jerrod Lampkin, the Claimant's replacement at Alside Revere. By Judicial Conference Decision and Order dated April 15, 2013, the Claimant's Motion to Admit Additional Evidence, dated March 8, 2013 was granted.

The testimony in the record, together with documentary evidence (including the additional pay records of Jerrod Lampkin, admitted through Judicial Conference Order dated April 15, 2013), has been provided to the members of the Appellate Panel, and has been under careful study, review, and consideration. In addition, Briefs and oral arguments were received from both parties.

Upon Request for Review, the Appellate Panel shall review the Order and Award, weigh the evidence presented at the initial Hearing, and if good cause be shown, make its own Findings of Fact and reach its own Conclusions of Law pursuant to S.C. Code Ann. § 42-17-50. After careful review of the evidence presented and after considering the arguments presented by the parties, the Appellate Panel, by unanimous vote, affirmed the Hearing Commissioner's Order of January 4, 2013. In reaching this Decision, the Appellate Panel did not consider any documents outside the record because the Claimant's Amended Form 30 was not timely served; therefore, any records submitted with the Amended Form 30 were not considered by the Panel.

EVIDENCE SUMMARY

At the original hearing on November 28, 2012, the Claimant sought benefits under the South Carolina Workers' Compensation Act based upon an accident at work on November 21, 2011. The Claimant alleged that he injured his left foot/left leg and left toes on that date and agreed he was at maximum medical improvement per the opinion of his treating physician, Dr.

Ohlson on August 13, 2012. At the hearing, the Claimant argued his disability greatly exceeded the rating to his left lower extremity issued by Dr. Ohlson.

Further, the Claimant argued that the average weekly wage and compensation rate reflected on the Form 20 were incorrect. The Claimant alleged he worked for Snelling Staffing for less than one year; therefore, his average weekly wage does not reflect the earnings he was making at the time of his injury. In particular, the Claimant argued his average weekly wage and compensation rate should be based on Jerrod Lampkin's earnings, his replacement at Alside Revere. Claimant requested payment of the alleged underpayment for past due checks and his award in a lump sum based on the alleged compensation rate.

Also, at the hearing, Claimant requested future medical care as recommended by Dr. Ohlson, his authorized treating physician. The Claimant requested Defendants be denied any type of temporary total disability credit even though the Claimant agreed with maximum medical improvement being reached on August 13, 2012. Claimant argued the credit should be reduced or negated based on his continued attempts to find work.

At the hearing, Defendants agreed Claimant sustained an admitted injury to his left foot and he is at maximum medical improvement per Dr. Ohlson's August 13, 2012 opinion. Defendants argued Claimant's compensation rate on the Form 20 is correct with an average weekly wage of \$492.85, resulting in a compensation rate of \$328.58. Defendants requested the award be based on the average weekly wage and compensation rate reflected on the Form 20. Furthermore, Defendants alleged the loss of use and disability to the Claimant's left lower extremity should be consistent with the 34% rating assigned by Dr. Ohlson, the authorized treating physician.

Following the pre-hearing conference, the Claimant testified on his own behalf. He testified he is 30-years old with a birthdate of March 5, 1982. Claimant graduated from high school in 2000 and has no other degrees or diplomas. At the time of the hearing, Claimant testified he was enrolled at Trident Technical College in his third semester in civil engineering studies. Additionally, Claimant maintains a commercial driver's license that he received in 2006.

Prior to working for Snelling Staffing, Claimant worked in a sports store, performed construction work, worked as an auditor, served as a caddy on Kiawah Island, and sold cars.

When the Claimant was originally hired for Snelling Staffing, he was earning \$11.50 per hour. His first assignment was at Ben Arnold where he worked as a route delivery driver and routinely lifted 40-50 pounds. When his assignment at Ben Arnold ended as a result of his school schedule, he was placed at Alside Revere where he was moving 75-100 boxes in a warehouse.

Claimant testified he had a previous Workers' Compensation injury when he cut his finger at work but received no benefits other than medical care. Claimant denied any additional Workers' Compensation claims. Claimant admitted to a motor vehicle accident in 2005 wherein he followed up with a chiropractor thereafter. Claimant settled his case for approximately \$5,000.00. Also, Claimant admitted to a motorcycle accident in 2001 but denied any broken bones. Claimant specifically denied any prior injuries to his left leg/left foot and any physical inhibitions in his ability to perform his work duties.

Before the Claimant received his second assignment at Alside Revere, he was out of work for approximately six weeks. His assignment at Ben Arnold ended as a result of conflicts with his school schedule. When he began working at Alside Revere, he received \$13.00 per hour.

and alleged he would receive nine hours per day and upwards of 45 hours or more per week. Claimant began his employment at Alside Revere on November 11, 2011 and worked nine hours that day. The following week, he worked 45.5 hours and earned a total of \$627.25.

Prior to the hearing, the deposition of the Claimant's supervisor, Dan Cobb was taken in lieu of live testimony. Mr. Cobb testified that the Claimant was brought on for full time work through Snelling Staffing, and he would be paid for at least 40 hours per week. Mr. Cobb testified there was a mandatory waiting period before Claimant would be hired as a permanent employee of Alside Revere. Following Claimant's accident, another employee was hired to replace him and receives overtime pay. Mr. Cobb testified he would not be able to hire the Claimant permanently until three months passed.

Claimant was involved in an admitted accident on November 21, 2011 wherein he injured his left foot when it was run over by a forklift. He was seen in the Emergency Room at Roper Hospital and diagnosed with multiple fractures. Thereafter, he was referred to Dr. Ohlson who provided treatment from November 28, 2011 through August 13, 2012. During his treatment with Dr. Ohlson, the Claimant experienced multiple problems with wound healing and was ultimately referred to a wound facility.

In addition, Claimant received evaluations by Dr. Gudas and Dr. Brilliant for independent medical evaluations. Additionally, Claimant was referred for pain management and Defendants authorized treatment with Dr. Tavel. At the time of the hearing, the Claimant was under Dr. Tavel's care for pain management.

Claimant testified his foot was chronically swollen secondary to the injury and an alleged malunited fracture. Claimant explained he had orthotics and was in need of custom shoes. Claimant states he is unable to fit his left foot into a normal shoe because his left foot is four

sizes wider than the right and an oversized toe box is needed. Claimant described pain in his foot and leg which runs down his knee. Claimant stated his ability to be on his feet is very limited. Furthermore, Claimant said his pain level is constant and his base level is a 3 to 4 out of 10. He experiences symptoms including foot tingling, numbness and burning. If the Claimant is required to be on his feet for any period of time, his pain level elevates. After approximately 10 to 15 minutes, he experiences an elevation in his pain level. After about 45 minutes, his pain level spikes to a 6 or 7 out of 10. Claimant continues to use medication to include Celebrex, Gralise, Tylenol and a topical cream. Also, Claimant testified that he ices his foot regularly.

Claimant testified his standing limitation was 15 to 20 minutes, walking was 30 minutes and stated he walks with a noticeable limp. Out of an eight hour day, Claimant estimates he could probably stand or walk for up to two hours if he were able to intermittently change positions to standing and walking. Claimant cannot run, climb, squat, jump, and has a very difficult time with any sort of inclines. Also, Claimant has problems with balance and states he has fallen several times.

Claimant submitted earnings from several additional workers in his pre-hearing brief and asked the Hearing Commissioner to consider these wages.

FINDINGS OF FACT

After careful review of the evidence presented in the instant case and after considering the arguments presented by the parties, the Appellate Panel of the South Carolina Workers' Compensation Commission, unanimously affirms the Hearing Commissioner's January 4, 2013 Decision and Order. We find substantial evidence in the record supports the Hearing Commissioner's Findings of Fact and adopt the following Findings of Fact as our own:

1. The parties to the proceedings are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act. This finding is based upon the stipulations and admissions of the parties.
2. Claimant's applicable compensation rate is \$358.62 based upon an average weekly wage of \$537.91. The Claimant's twenty weeks of work is insufficient to base his average weekly wage, especially in light of his assignment and wages changing. However, there is no guarantee he would have continued with the assignment at Alside Revere (Testimony of Dan Cobb by way of Deposition). Employer provides temporary assignments with a goal of permanent placement. The third employee wages submitted do not provide for fifty-two weeks and they were all employed by Alside Revere. A fair and just method to calculate the wages of the Claimant is to take an average of the wages along with a three other employee wages provided. The Claimant--\$492.85; Atkins--\$506.88; Lampkin--\$618.50; and Clark--\$533.41.
3. On November 21, 2011 the Claimant suffered an injury by accident which arose out of and occurred during the course and scope of his employment to his left leg/foot and toes. The Claimant has received medical care and reached maximum medical improvement as of August 13, 2012.
4. The Claimant has a disability to the left leg of 34%.
5. The Defendants will receive a credit for all weekly benefits paid after the date of maximum medical improvement (August 13, 2012) pursuant to Curiel v. Environmental Management Services, 376 S.C. 23, 655 S.E.2d 482 (2007).
6. Claimant will be entitled to future medical care and treatment as indicated by Dr. Ohlson in his report of August 13, 2012, to include future surgery that will more

likely than not be required on the maligned and anklylosis position of the fifth toe. Claimant will also require extra wide shoes. He will need Celebrex. He has been referred to Dr. Nancy Lembo for pain management and Defendants have authorized Dr. Tavel, whom the Claimant shall be allowed to continue to see.

CONCLUSIONS OF LAW

In view of these Findings of Fact, and as provided in the South Carolina Code of Laws, WE, THE APPELLATE PANEL, CONCLUDE THE FOLLOWING AS MATTERS OF LAW:

1. Pursuant to §42-1-130 and §42-1-140, at the time of the accident the Claimant and Defendant/Employer were covered parties under the provisions of the South Carolina Workers' Compensation Act.
2. Under §42-1-160, the Claimant suffered a compensable injury by accident arising out of and in the course and scope of his employment.
3. Pursuant to §42-1-40, the average weekly wage is defined. The Claimant is determined to have an average weekly wage of \$537.91 and a compensation rate of \$358.62.
4. Pursuant to §42-15-60 the Defendants are responsible for payment to medical providers of the medical expenses incurred by Claimant for treatment of his injury. The Claimant will be entitled to future medical care as directed and suggested by his authorized treating physician, Dr. Ohlson, to include pain management.
5. Pursuant to §42-9-10 the Claimant is entitled to compensation for a period of temporary total disability benefits.

6. Pursuant to §42-9-30, the Claimant is entitled to compensation for a specific permanent partial disability of 34% to the leg.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, we unanimously adopt the Hearing Commissioner's Order as follows,

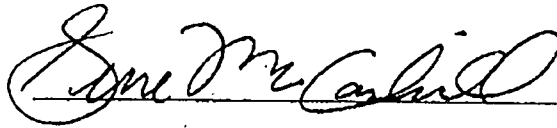
IT IS THEREFORE, HEREBY ORDERED that the Claimant had a compensable injury of November 21, 2011 to his left leg and reached maximum medical improvement on August 13, 2012 and

IT IS FURTHER ORDERED that the Claimant has an average weekly wage of \$537.91 and a compensation rate of \$358.62 and Defendants shall pay the Claimant for the underpayment of benefits and shall pay for a permanent loss of use and disability to the left leg of 34 percent (66.3 weeks) in a lump sum after deducting a credit for the weekly benefits paid after August 13, 2012; and

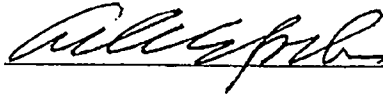
IT IS FURTHER ORDERED the Defendants shall provide future medical care with Dr. Ohlson and Dr. Tavel as the authorized treating physicians with that medical care to include the medicals that have been set out by Dr. Ohlson in his medical records and his report of August 13, 2012; and

IT IS SO ORDERED.

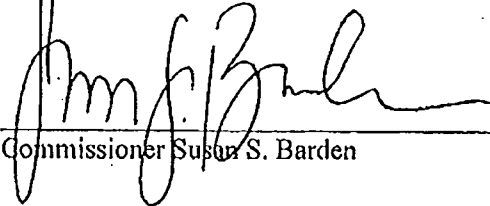
FULL AFFIRMATION



Commissioner Gene McCaskill



Commissioner Andrea C. Roche



Commissioner Susan S. Barden

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, postage paid, in the United State mail addressed to the attorney or attorneys for said parties.

This 19 day of December, 2013
By Valencia D. Peltier

John McDaniel

Allison C. Nussbaum

Att. C

ATTORNEY CLIENT
PRIVILEGE

From: john mcdaniel [mailto:jmcdaniel1982@gmail.com]
Sent: Saturday, October 12, 2013 6:34 PM
To: Roberts, Keith; klove@wcc.sc.gov; bcheeseboro@wcc.sc.gov
Cc: Allison Nussbaum; Crocker, Virginia; Cannon, Gary; eboyd@wcc.sc.gov; john mcdaniel; Elizabeth McDaniel
Subject: Re: FW: FW: remanded or bifurcated? SCWCC file #1116275

Please see attached Amended Form 30 for the upcoming review hearing in the above referenced WCC file.

Thanks
John C. McDaniel

On Wed, Oct 9, 2013 at 10:52 AM, Roberts, Keith <keroberts@wcc.sc.gov> wrote:

Dear Mr. McDaniel,

The appellate hearing was scheduled following the Hearing held by Commissioner James on July 8th, 2013 in accordance with the May 20th, 2013 judicial conference order. You should have been aware that the stay was lifted once the remanded issue was heard by Commissioner James on July 8th, 2013. Your case has not been "bifurcated" in the legal sense of the term. Bifurcation is a process that is sometimes used in Circuit Court that is inapplicable to workers' compensation. When a member of our staff informed you that your case had been "bifurcated", what they were trying to communicate to you was that, pursuant to your request on April 15th, 2013, the hearing by the appellate panel had been stayed and the issue of after discovered evidence had been separated from the remaining issues on appeal and remanded to the single Commissioner. As you are aware, the person who told you your case had been "bifurcated" is not an attorney and was merely trying to help you understand the status of your case. That person was wholly unaware that the verb "bifurcated" could be confused with a legal process that is used in civil and criminal trials that is unrelated to workers' compensation. Misunderstanding legal terms is a risk that you run by choosing to remain *pro se*. If you are having trouble understanding any aspect of your case, you are permitted to retain a private attorney to represent you in all proceedings before the Workers' Compensation Commission.

Since your case has not been "bifurcated" I am unable to forward you any records of the "bifurcation" of your case. However, if you would like a copy of your workers' compensation file, you may request it. There will be a base charge of \$20.00, plus \$0.50 for each page over twenty pages, plus the actual cost of postage.

I noticed that in your email below you did not send a copy to a representative of the Defendants. I am forwarding a copy of your email to Allison Nussbaum. In the future, you should Cc Ms. Nussbaum with any correspondence to the Commission, in order to avoid *ex parte* communication.

Since you made the decision to proceed with your claim *pro se*, you have relied heavily on the Commission's staff to assist you in understanding and pursuing your claim. We have made every effort to respond to your questions promptly and accurately. Various members of our staff have dedicated an inordinate amount of time to assisting you with your numerous inquiries. In order to best serve everyone involved and avoid future confusion, you are to direct all future correspondence with the Commission, other than official pleadings and motions, to my and Mr. Cannon's attention only.

Thank you in advance for your cooperation with our request.

Sincerely,

J. Keith Roberts

Attorney at Law

South Carolina Workers' Compensation Commission

1333 Main Street - Suite 500

Columbia, South Carolina 29201

Direct: [\(803\) 737-5701](tel:8037375701)

KeRoberts@wcc.sc.gov

From: john mcdaniel [<mailto:jmcdaniel1982@gmail.com>]

Sent: Tuesday, October 08, 2013 5:03 PM

To: Roberts, Keith; Cannon, Gary
Subject: Re: FW: remanded or bifurcated? SCWCC file #1116275

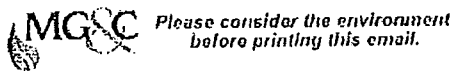
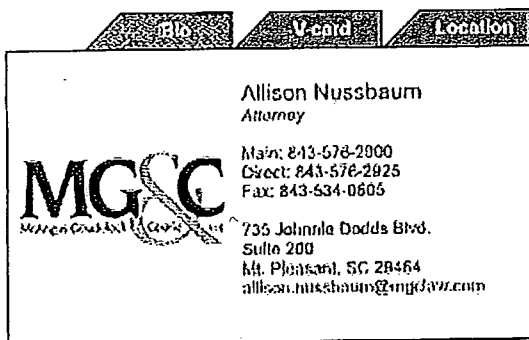
Mr Roberts,

This email does not address four concerns.

1. Was the appeal hearing scheduled prior to me receiving the 2nd order from Ms. James on October 4, at 3:52 pm?
2. When did I receive notice that the stay had been lifted?
3. When was I notified that my case had been bifurcated?
4. Can you forward any records of the bifurcation of my case?

Sincerley, John McDaniel

On Oct 8, 2013 4:41 PM, "Roberts, Keith" <keroberts@wcc.sc.gov> wrote:



South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
803-737-5675



WCC File #: 1116275
Carrier File #: _____
Carrier Code #: _____
Employer FEIN #: _____

Claimant's Name: John C. McDaniel SSN: 458-99-7462 Employer's Name: Career Employment Professional d/b/a Snelling Staffing
Address: 1387 Camp Road, Unit C Address: _____
City: Charleston State: SC Zip: 29412 City: Charleston State: SC Zip: _____
Home Phone: 843 425 3000 Work Phone: _____ Insurance Carrier: United Wisconsin Insurance Company
Preparer's Name: John C. McDaniel Law Firm: _____ Preparer's Phone #: 843 425 3000

REQUEST FOR COMMISSION REVIEW

Request for Commission Review by claimant employer (check one) Date of Injury: 11/21/2011

The undersigned makes application for review of the findings of the Commissioner in the above-captioned case. The request for review is based on the following grounds: (State the grounds of your appeal in the form of questions presented. Each question presented must contain a concise statement of one proposition of law or fact. Refer to evidence by title and exhibit number. Use additional pages if necessary).

See attached addendum "Grounds for review 1-25"; Index of Exhibits; Attached Exhibits
~~See attached~~ Request for extended oral argument

(Check one) Oral argument is is not requested. Appellant's request for oral argument is waived if not indicated on this form.

I certify that I have served this document pursuant to R.67-211 by delivering a copy to _____ Name

on the _____ day of _____ by _____ Address
 first class mail personal service certified mail.

[Signature] Preparer's Signature John C. McDaniel Title 10/09/2013 Date

Check this box if you are not represented by an attorney.

If the claimant appeals and is representing himself or herself, the Judicial Department will prepare the additional copies of this form and serve this form on the opposing party. R.67-701B. Otherwise, file the original and four copies of this form with the Judicial Department. The appeal must be postmarked no later than 14 days from the date of service of the Hearing Commissioner's decision. R.67-701 and R.67-205. Attach the filing fee to this form. Attach a Form 32 if you are unable to pay the filing fee. Refer to R.67-701 through R.67-711 for additional information.

WCC Form # 30
Rev. 3/97

*** AMENDED 30 ***

REQUEST FOR COMMISSION REVIEW

GROUNDS FOR REVIEW

Claimant: John C. McDaniel

Employer/Carrier: Carcer Employment Professional d/b/a Snelling Staffing

WCC No: 116275

- 1st: The Hearing Commissioner erred in Finding of Fact # 2 and Conclusion of Law #3 in the order dated January 4, 2013 in finding the Claimant had a compensation rate of 358.62 based upon an average weekly wage of 537.91; the error being the Single Commissioner should have found the Claimant was entitle to an average weekly wage and compensation rate in an amount not less than 627.75 with a compensation rate of \$418.91
- 2nd: The Hearing Commissioner erred in Finding of Fact #2 in her order dated January 4th, 2013 and Finding Fact #5 in her order dated September 30th, 2013 that a fair and just method to calculate the wages of the Claimant was to take an average of his wages from a previous job along with the three other employee wages provided; the error being that it was not fair and just to the claimant as it did not reflect the earnings of the injured employee and the error being that the amount that should have been used should be the actual earnings in the employment at time of injury with the ultimate objective being to fairly reflect the Claimant's probable future earnings.
- 3rd: The Hearing Commission erred in finding as fact and in Finding of Fact #2 on her order dated January 4th, 2013 and Finding of Fact #3 on her order dated September 30, 2013 that the wages of the Claimant, Atkins, Lampkin and Clark were respectively \$492.85; \$506.88; \$618.50 and \$533.41; the error being the wages of the Claimant were based on an incorrectly calculated form 20 that does not accurately reflect the wages of the Claimant and the wages of the other three individuals included partial weeks and are not correctly calculated under the definition of average weekly wage.
- 4th: The Hearing Commissioner erred in finding as a fact and in Finding of Fact #2 on her order dated January 4th, 2013 and Finding of Fact #4 on her order dated September 30th, 2013 that the Claimant was not likely to be hired by Allside Revere; the error being that the testimony relied on has been discredited and the Claimant's testimony should hold more weight.
- 5th: The Hearing Commissioner erred in Finding of Fact #4 and Ruling of Law #6 in her Order dated January 4, 2013 in finding the Claimant has a disability to the left leg of 34%; the error being that the Single Commissioner should have found that the

Claimant's loss of use and disability greatly exceeded this amount based upon the residual vocational impact to the Claimant and how disabling the injury actually is to the Claimant's physical and earning capacities.

- 6th: The Hearing Commissioner erred in determining the Claimant's Disability under scheduled loss in Ruling of Law #6 in her order dated January 4, 2013; the error being that only when injury is confined to a scheduled member and there is no impairment of any other part of the body is a scheduled loss warranted.
- 7th: The Hearing Commissioner erred in Finding of Fact #5 in her order dated January 4, 2013, that the Claimant reached Maximum Medical Improvement on August 13, 2012; the error being that the record reflects that one treating physician determined that Claimant was at MMI from an orthopedic stand point on August 13, 2013 and referred Claimant to other specialized physicians for further treatment and evaluation, one treating physician had not yet determined MMI and two independent medical evaluations determined that Claimant had not reached MMI.
- 8th: The Hearing Commissioner erred in finding as a fact and a ruling as a matter of law in Finding of Fact #5 and Ruling of Law #5 in her order dated January 4, 2013, that the Defendant's should receive a credit for all weekly benefits paid after the date of MMI; The error being the Single Commissioner should have found the Defendants were not entitle to a credit as the Claimant had not been able to return to work and no work had been offered, although the Claimant was ready and available to work, attempted to come back to the work within his restrictions and Claimant had been actively seeking other employment within his restrictions.
- 9th: The Hearing Commissioner erred in failing to find as a fact and rule as a matter of law that the Defendants should be subject to fines and penalties for late payments of Temporary Total Disability and Temporary Partial Disability Benefits; the error being that the record reflects payments were made at least 14 days after they were due, the records reflects that Defendant's failed to make timely payments on multiple occasions and the fine is mandated by statute and law.
- 10th: The Hearing Commissioner erred in failing to find as a fact and rule as a matter of law that the Defendants should be subject to fines and penalties for not authorizing Claimant's treating physicians' prescribed medical care and not authorizing treating physicians' medical care in a timely manner; the error being that the record reflects the Claimant did not receive all treatment and did not receive all treatment in a timely manner.
- 11th: The Hearing Commissioner erred in finding that the Claimant was not entitled to submit evidence and that the Hearing Commissioner had discretion to decline additional evidence related to the case at the remand hearing dated July 8, 2013; the

error being the Claimant has right to due process and equal protection under the law.

- 12th: The Hearing Commissioner erred in finding that the Claimant was not entitled to submit deposition testimony to impeach Dan Cobb's deposition testimony at the July 8, 2013 hearing; the error being that the Claimant has the right to due process and the right to impeach a deponent's testimony with any other deposition.
- 13th: The Hearing Commissioner erred in granting Defendant's Motion to Quash subpoena and proceeding with the hearing without enforcing Claimant's properly served subpoenas for the remand hearing dated July 8th, 2013; the error being that the Defendant's Motion to Quash was never properly served on the claimant, is without merit and Claimant is entitled to due process to include but not be limited to: the opportunity to subpoena witnesses/parties and question witnesses/parties under oath.
- 14th: The Hearing Commissioner erred in proceeding with the remand hearing with outstanding Motions to be heard; the error being that the Claimant is entitled to due process and procedural due process under the law.
- 15th: The Hearing Commissioner erred in not allowing the Claimant to move to compel treatment and compel compliance with records subpoena at the remand hearing dated July 8, 2013; the error being that the Claimant is entitled to due process under the law.
- 16th: The Hearing Commissioner erred in not ruling on Claimant's properly submitted proposed findings of fact after the hearing dated July 8th, 2013; the error being that the Claimant is entitled to due process and entitled to submitted proposed findings of facts which shall be ruled upon under the law.
- 17th: The Hearing Commissioner and the Commission erred in determining the scope and latitude of their discretion; the error being that the Claimant is entitled to due process and entitled to procedural due process under the law.
- 18th: The Commission and the Hearing Commissioner erred by abusing their discretion with procedural process; the error being that the Worker's Compensation Act must be construed liberally in order to protect the injured worker.
- 19th: The Commission erred in determining that the remand hearing was not governed by 67-601 through 67-615; the error being that the notice of hearing for the remand hearing dated July 8, 2013 outlined regulations applicable and Claimant is entitled to procedural due process under the law.

- 20th: The Commission erred in properly serving Claimant with Notice of Remand Hearing; the error being that the Claimant is entitled to due process under the law, to include but not be limited to; proper notification of issues to be addressed and proper notification of regulations to govern the hearing and 30 days notice of hearing.
- 21st The Commission erred in properly serving Claimant with Notice of Review Hearing and/or Notice of Lifting Stay of the Claimant's review hearing, to notify claimant of the resetting of the case on the appellate docket and placement on the appellate docket; the error being that the Claimant is entitled to due process under the law, to include but not be limited to; proper notification of issues to be addressed, proper notification of regulations to govern the hearing and 30 days notice prior to hearing.
- 22nd The Hearing Commissioner erred in holding all other issues in abeyance, the error being that an order that holds related issues in abeyance cannot be fully dispositive of the issue at hand.
- 23rd The Hearing commissioner erred in the service of the second order, being that the defendants counsel was notified by electronic mail and U.S. mail and the pro se claimant was served by registered mail only; the error being that all parties must be notified by the same means at the same time.
- 24th The Hearing Commissioner erred in failing to admit rebuttal evidence; the error being not allowing Claimant to respond to defendants statements with evidence.
- 25th The Hearing Commissioner erred in not adhering to hearing proceedings obligated by law, the error being that procedural law outlines the sequence of an administrative law court hearing, to include but not be limited to the opportunity to make closing statements, the right to submit substantial evidence into the record and the opportunity to question parties.

Index of Exhibits for Review

Claimant/Appellant: John C. McDaniel

Employer/Carrier: Career Employment Professional d/b/a Snelling Staffing

WCC No: 116275

EXHIBIT	DOCUMENT
A	Excerpts from Dan Cobb's Deposition testimony Pages 13-16
B	Excerpts from Hearing Transcript 11/28/2012 Page 23-24
C	Snellings Industrial Light DOT Form
D	Roper ER Findings 11/21/2011
E	Dr. Tavel MMI 7/22/2013
F	Email with Jim Pascuttii regarding available work 12/27/2012
G	Letter to MCG regarding late payments 7/23/2012
H	Master Dossier Report note regarding treatment 2/16/2012
I	Affidavit I, regarding bifurcation
J	Affidavit III, regarding Proposed findings of fact/Order
K	Affidavit III, regarding Scope of Hearing

Att. D

South Carolina Workers' Compensation Commission

1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
(803) 737-5723

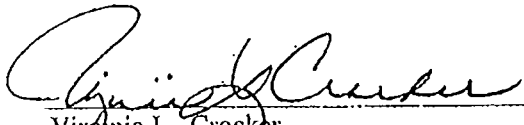


WCC File #: 1116275
Date of Injury: 11/21/2011

ADMINISTRATIVE
ORDER

JOHN MCDANIEL v. CAREER EMPLOYMENT PROFESSIONAL
WCC File No: 1116275

The Form 32(s) in this matter for the Motion for Additional Evidence dated 5/6/13 and Motion for Additional Evidence dated 5/10/13 have been denied per the Chairman Commissioner. You will need to file two separate filing fees of twenty-five dollars (\$25) for each Motion within ten (10) days if you wish to proceed with these Motions.


Virginia L. Crocker
Judicial Director

Date: June 3, 2013

CERTIFICATE OF SERVICE

I hereby certify on June 3, 2013, I served this document on the parties listed below by electronic mail or depositing a copy hereof, postage prepaid, in the United States mail and addressed as follows:

JOHN MCDANIEL
1387 Camp Road
Unit C
CHARLESTON, SC 29412

CAREER EMPLOYMENT PROFESSIONAL
702 MALL BLVD
SAVANNAH, GA 31406

R. Mark Davis
McAngus Goudelock & Courie LLC
PO Box 650007
Mount Pleasant, SC 29465

By: Valerie D. Deller, Judicial Department

Att. E

DAVID T. PEARLMAN
J. KEVIN HOLMES
THOMAS M. WHITE
DALE E. VAN SLAMBROOK
MALCOLM M. CROSLAND, JR.
STEVEN E. GOLDBERG
MICHAEL J. JORDAN
BENJAMIN W. AKERY

CHARLES S. GOLDBERG, LLC, OF COUNSEL

HUGO M. SPITZ (RETIRED)
IRVING STEINBERG (1902-1990)

Reply to: Thomas M. White
twhite@steinberglawfirm.com

THE STEINBERG

LAW FIRM

L. L. P.

118 Goose Creek Blvd., South
P.O. Box 1028
Goose Creek, South Carolina 29445
Telephone (843) 572-0700
Fax (843) 572-1871
www.steinberglawfirm.com

DOWNTOWN OFFICE
61 BROAD STREET
P.O. BOX 9
CHARLESTON, SC 29402-0009
TELEPHONE (843) 720-2800
FAX (843) 722-1190

SUMMERVILLE OFFICE
1620 OLD TROLLEY RD, SUITE B
SUMMERVILLE, SC 29485
TELEPHONE (843) 871-8522
FAX (843) 871-8565

October 31, 2012

COPY

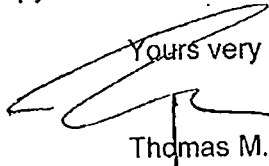
Commissioner Melody James
S.C. Workers' Compensation Commission
P.O. Box 1715
Columbia, SC 29202-1715

**RE: John McDaniel v. Career Employment Professional d/b/a Snelling Staffing
WCC File No.: 1116275**

Dear Commissioner James:

Enclosed please find the Pre-Hearing Brief and APA Submissions on behalf of the Claimant in the above matter which is scheduled to be heard before you on November 15, 2012. By copy of this letter, I am sending to R. Mark Davis, Esquire, attorney for the Defendant, a copy of the Pre-Hearing Brief and APA Submissions.

Yours very truly,



Thomas M. White

TMW/llb

Enclosures

cc: John McDaniel
R. Mark Davis, Esquire
Roy Maybank, Esquire

South Carolina Workers' Compensation Commission
1333 Main St., Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
(803) 737-5739
www.wcc.sc.gov



PRE-HEARING BRIEF
WCC File No: 1116275

Claimant's Name: John McDaniel Employer's Name: Career Employment Professional d/b/a Snelling Staffing
Address: 1387 Camp Rd. Address: Ashley River Rd.
Unit C
City: Charleston State: SC Zip: 29412 City: Charleston State: SC Zip: _____
Home Phone: _____ Work Phone: _____ Carrier: United Wisconsin Insurance Company
Preparer's Name: Thomas M. White, Esquire Preparer's Phone #: (843) 572-0700

A claim for workers' compensation benefits is made based on the following grounds:

Injury Illness Repetitive Trauma

1. Compensation Rate: \$418.19 2. AWW: \$627.25 Date of Injury: November 21, 2011
3. Type of Injury and body part(s): left foot
4. Facts in controversy: The Defendants have admitted an injury to the left foot. What is the Claimant's correct average weekly wage and compensation rate? For what period of time is Claimant entitled to temporary total and/or temporary partial disability? Is Claimant entitled to a higher compensation rate than reflected on the Form 20? Is Claimant entitled to the underpayment of temporary total paid to date? Is Claimant at maximum medical improvement? If so, what is his loss of use and disability? Does Claimant have future medical needs under Dodge? Claimant has been referred to a pain specialist. Claimant has not been able to return to work as no work has been provided within his restrictions by his employer?
5. Legal issues involved: Correct average weekly wage and compensation rate. Claimant is still in need of medical care and has been referred for pain management.
6. Unusual aspects: Defendants have failed to provide income information from similar employees that have been subpoenaed. Claimant has not been able to return to work and no work has been offered within his restrictions. Claimant has been referred for pain management, is still treating, and will have future medical needs. Claimant received a pay increase from \$11.50 an hour to \$13.00 an hour shortly before his injury and had moved to a new position in the warehouse where he was averaging 45.5 hours per week. Average weekly wage should be \$627.25 per week. Claimant has provided this information to the Defendants who have refused to pay appropriate benefits and are continuing to underpay the Claimant.
7. Witnesses (designate if expert):* Dan Cobb
8. Exhibits: Pay Stubs, TTD check stubs, Subpoenas and letters regarding like employee pay, any items from Personnel File
9. Medical evidence (indicate report pursuant to R.67-612; deposition or appearance): SEE ATTACHED LIST
10. Name, address, and specialty, if any, of the treating physician: Dr. Ohlsen, Dr. Gudas, Dr. Brilliant
11. Impairment rating(s); body part(s); physician and date of opinion: Dr. Ohlsen 8/13/12 Claimant is at maximum medical improvement. Refer to Dr. Nancy Lembo for chronic pain management. Walking tolerance is limited to one hour. Lifting capacity 10 pounds. Can't climb ladders, can't do roof work, can't run, can't stand for long periods of time. Needs future medical care to include possible surgery. Orthotics will be needed. 15% of the left lower extremity. And additional 2% for the ankylosis of the fifth toe for a total of 17% to the left lower extremity. Continuing to take occasional Celebrex and Lyrica. Dr. Brilliant 10/11/12 50% of the left foot. Should avoid strenuous activities such as running, jumping, prolonged standing. Basically limited to sedentary activity.
12. I am amending my Form 50/51 in the following manner: _____

I verify the contents of this form are accurate and true to the best of my knowledge.

Signature: [Signature] Email: twhite@stelnberglawfirm.com

Date of hearing: November 15, 2012 Time needed for hearing: 1 hour

On behalf of Claimant Employer

File this form and proof of service on the opposing party according to R.67-611 and R.67-212. Do not send medical reports.
* Commissioners reserve the right to admit expert witnesses at hearings.

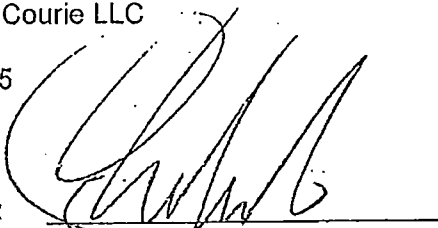
CERTIFICATE OF SERVICE

I hereby certify that on October 31, 2012, I served the Defendant in the foregoing matter with a copy of the attached Form 58/Pre-Hearing Brief and APA Submissions by mailing a copy of same via first class mail, postage pre-paid and addressed as follows:

S.C. Workers' Compensation Commission
P.O. Box 1715
Columbia, SC 29202

R. Mark Davis, Esquire
McAngus Goudelock & Courie LLC
Post Office 650007
Mt. Pleasant, SC 29465

By:



Thomas M. White

APA SUBMISSIONS

John McDaniel vs. Career Employment Professional d/b/a Snelling Staffing

WCC File No.: 1116275

1.	Roper Hospital	Records, 11/21/11	Pages 1-15
2.	RehabCenters of Charleston	Records, 2/20/12-6/1/12	Pages 16-20
3. Blake Ohlson, MD	Orthopaedic Specialists of Chas.	Records, 11/28/11-8/13/12	Pages 21-55
4. Charles Gudas, MD	Associated Foot Specialists	Records, 4/27/12	Pages 56-58
5. Howard Brilliant, MD	Parkwood Orthopaedics	Records, 10/11/12	Pages 59-60
6. EXHIBIT		Pay Stubs	Pages 61-90
7. EXHIBIT		TTD Pay Stubs	Pages 91-109
8. EXHIBIT		Subpoenas/letters re: like employee wages	Pages 110-119

10/31/12

DAVID T. PEARLMAN
J. KEVIN HOLMES
THOMAS M. WHITE
DALE E. VAN SLAMBROOK
MALCOLM M. CROSLAND, JR.
STEVEN E. GOLDBERG
MICHAEL J. JORDAN
BENJAMIN W. AKERY

CHARLES S. GOLDBERG, LLC, OF COUNSEL

HUGO M. SPITZ (RETIRED)
IRVING STEINBERG (1002-1080)

Reply to: Thomas M. White
twhite@steinberglawfirm.com

THE STEINBERG

LAW FIRM
L.L.P.

118 Goose Creek Blvd., South
P.O. Box 1028
Goose Creek, South Carolina 29445
Telephone (843) 572-0700
Fax (843) 572-1871
www.steinberglawfirm.com

DOWNTOWN OFFICE
61 BROAD STREET
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TELEPHONE (843) 720-2800
FAX (843) 722-1190

SUMMERVILLE OFFICE
1520 OLD TROLLEY RD, SUITE B
SUMMERVILLE, SC 29485
TELEPHONE (843) 871-6522
FAX (843) 871-8565

November 15, 2012

Commissioner Melody James
S.C. Workers' Compensation Commission
P.O. Box 1715
Columbia, SC 29202-1715

 COPY

RE: John McDaniel v. Career Employment Professional d/b/a Snelling Staffing
WCC File No.: 1116275

Dear Commissioner James:

Enclosed please find the Supplemental APA Submissions on behalf of the Claimant in the above matter which is scheduled to be heard before you on November 28, 2012. By copy of this letter, I am sending to Allison Nussbaum, attorney for the Defendant, a copy of the Supplemental APA Submissions.

Yours very truly,


Thomas M. White

TMW/llb

Enclosures

cc: John McDaniel
Allison Nussbaum, Esquire
Roy Maybank, Esquire

SUPPLEMENTAL APA SUBMISSIONS

John McDaniel vs. Career Employment Professional d/b/a Snelling Staffing

WCC File No.: 1116275

9. EXHIBIT		Wage Records of Like Employees	Pages 120-122
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11/15/12

MGC COPY



ATTORNEYS AT LAW

Reply To
R. MARK DAVIS
Direct Dial: (843) 576-2782
mdavis@mgclaw.com
CHARLESTON

November 5, 2012

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Commissioner Melody L. James
S. C. WORKERS' COMPENSATION COMMISSION
Post Office Box 1715
Columbia, South Carolina 29202-1715

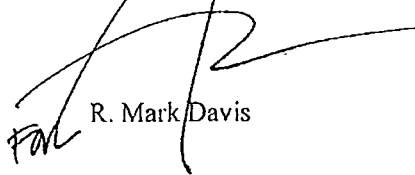
RE: John McDaniel v. Career Employment Professionals d/b/a Snelling Staffing Services and
United Wisconsin Insurance Company c/o United Heartland
Date of Accident: November 21, 2011
WCC File No.: 1116275
Our File No.: 20638.12027
Claim No.: 041100021048

Dear Commissioner James:

Please find enclosed our Pre-Hearing Brief and Notice of Witnesses and Written Medical Reports for filing in the above captioned matter.

By copy of this letter to Thomas M. White, Esquire, the claimant's attorney, we are notifying him of these submissions and serving copies of the same upon him by mail.

Very truly yours,


R. Mark Davis

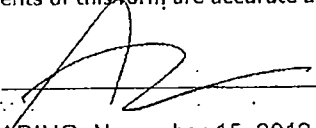
RMD/gcm
Enclosures

cc: Thomas M. White, Esquire, The Steinberg Law Firm, L.L.P.
Nicole Service, United Heartland

77

I verify the contents of this form are accurate and true to the best of my knowledge.

SIGNATURE

 For RMD

Email: mdavis@mgclaw.com

DATE OF HEARING: November 15, 2012

Time needed for hearing: 1 hour

On behalf of Claimant Employer

File this form and proof of service on the opposing party according to R.67-611 and R.67-212. Do not send medical reports.
Commissioners reserve the right to admit expert witnesses at hearings.

WCC FORM # 58 REV. DATE 9/07

58

PRE-HEARING BRIEF

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 11-16275

JOHN MCDANIEL,

Employee,

Claimant,

vs.

SNELLING STAFFING SERVICES,

Employer,

AND

UNITED WISCONSIN INSURANCE
COMPANY C/O UNITED HEARTLAND,

Carrier,

Defendants.

NOTICE OF WITNESSES AND
WRITTEN MEDICAL REPORTS
TO BE INTRODUCED AS
DIRECT EVIDENCE ON BEHALF
OF DEFENDANT

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION AND THOMAS
M. WHITE, ESQUIRE:

YOU ARE NOTIFIED that the Defendants, pursuant to the provisions of the South
Carolina Workers' Compensation Act and Section 1-23-330 of the South Carolina Code of Laws
(Cum. Supp. 1988) submit the following medical records and other documents as evidence:

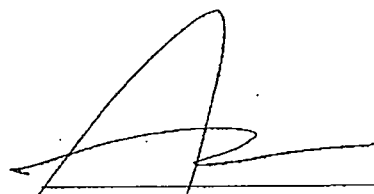
EXHIBIT	DESCRIPTION	DATES	PAGES
A.	Claimant's wage records		13 pages
B.	Correspondence to Claimant's attorney	10/19/12	1 page

YOU ARE FURTHER NOTIFIED that you have the right to cross-examine or otherwise
oppose this evidence and, should you desire to exercise this right, you are to promptly schedule

the eposition of any provider whose records are submitted, for the purposes of cross-examination, or otherwise promptly submit opposing medical records into evidence.

YOU ARE FURTHER NOTIFIED that these records, or photocopies of the same, will be provided to the South Carolina Workers' Compensation Commission for insertion in their file and for consideration as evidence on behalf of the Defendants.

YOU ARE FURTHER NOTIFIED that the following witnesses may be called on behalf of the Defendants: Claimant, Jim Pascutti, Dan Cobb, and/or other representatives of the Employer.


FM/ R. MARK DAVIS
MCANGUS GOUDELOCK & COURIE, L.L.C.
Post Office Box 650007
735 Johnnie Dodds Blvd, Suite 200
Mt. Pleasant, South Carolina 29465
(843) 534-0101
Attorneys for the Employer/Carrier

Charleston, South Carolina
November 5, 2012



SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

ATTORNEYS AT LAW

W.C.C. FILE NO: 1116275

JOHN MCDANIEL,

Employee,

Claimant,

vs.

SNELLING STAFFING SERVICES,

Employer,

AND

UNITED WISCONSIN INSURANCE COMPANY
C/O UNITED HEARTLAND,

Carrier,

Defendants.

CERTIFICATE
OF
SERVICE

The undersigned certifies that she is an employee at MCANGUS GOUDELOCK & COURIE, and that she has served, on the date set forth below, a copy of the document described below, in the above entitled action to the following persons, pursuant to Section 15-9-930 and Section 15-9-940 of the Code of Laws of South Carolina, 1976, by depositing a copy of same in the United States Mail, postage prepaid, addressed to:

TO: Thomas M. White, Esquire
The Steinberg Law Firm, L.L.P.
Post Office Box 1028
Goose Creek, South Carolina 29445

S. C. WORKERS' COMPENSATION
COMMISSION
Post Office Box 1715
Columbia, South Carolina 29202-1715

DOCUMENT: Pre-Hearing Brief and Notice of Witnesses and Written
Medical Reports

DATE OF MAILING: November 5, 2012

Gayle C. McDaniel
Legal Assistant to R. Mark Davis

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

W.C.C. File No. 1116275

John McDaniel, Employee,.....Appellant,

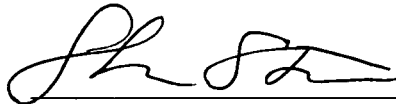
v.

Career Employment Professional
d/b/a Snelling Staffing, Employer, and
United Wisconsin Insurance Co., Carrier, Respondents.

PROOF OF SERVICE

I certify that on the 20th day of May 2014, I served the Respondents' **Motion to Strike and/or Amend Portions of Appellant's Initial Brief and Designation of Matter** on John McDaniel by depositing a copy of it in the United States Mail, postage prepaid, addressed as follows:

John C. McDaniel, *Pro Se*
1387 Camp Road, Unit C
Charleston, SC 29412



Sharon Strubel
Legal Assistant to Helen F. Hiser
McAngus, Goudelock & Courie LLC
735 Johnnie Dodds Blvd., Suite 200
P.O. Box 650007
Mount Pleasant, South Carolina 29465
(843) 576-2900

*Attorneys for Respondents Career Employment
Professional d/b/a Snelling Staffing and United
Wisconsin Insurance Co.*

RECEIVED

MAY 23 2014

SC Court of Appeals



Reply To

HELEN F. HISER
Direct Dial: (843) 576-2930
helen.hiser@mgclaw.com

May 20, 2014

Via U.S. Mail

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RE: John McDaniel v. Career Employment Professionals d/b/a Snelling Staffing
Services and United Wisconsin Insurance Company c/o United Heartland
Date of Accident: November 21, 2011
WCC File No.: 1116275
Our File No.: 20638.12027
Claim No.: 041100021048
Appellate Tracking No.: 2014-000186

Dear Ms. Kitchings:

Enclosed please find the original and seven (7) copies of Respondents' Motion to Strike and/or Amend Portions of Appellant's Initial Brief and Designation of Matter, and the original and one copy of the Proof of Service in the above-referenced matter. Please file the originals and return a clocked-in copy in the self-addressed, stamped envelope.

Also enclosed is our firm's check in the amount of \$25 for filing the motion.

If you have any questions, please do not hesitate to contact me.

Yours truly,

McAngus Goudelock & Courie, LLC


Helen F. Hiser

RECEIVED

MAY 23 2014

SC Court of Appeals

Enclosures

cc: John C. McDaniel, *Pro Se*