

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

W.C.C. File No. 1116275

RECEIVED

JUN 09 2014

SC Court of Appeals

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

v.

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

**REPLY TO APPELLANT'S RESPONSE
IN OPPOSITION TO
MOTION TO STRIKE AND/OR AMEND**

Pursuant to Rule 240, SCACR, Respondents Career Employment Professional d/b/a Snelling Staffing and United Wisconsin Insurance Co. hereby reply to Appellant's response in opposition ("Opposition") to their Motion to Strike and/or Amend Portions of Appellant's Initial Brief and Designation of Matter ("Motion to Strike").

As to Paragraphs 1 and 2,¹ the recordings are not official recordings or transcripts in these proceedings, and were never submitted to or admitted by the Commission. The fact that this is non-record evidence cannot be cured by Appellant's offer to provide a copy of the recordings to Respondents. These non-record items must be stricken from Appellant's Initial Brief and from his Designation of Matter.

As to Paragraph 3, Appellant's Amended Form 30 was considered only to the extent the Commission ruled it was untimely and that the attachments were, therefore, not

¹ All "Paragraph" references herein are to items initially described in Respondents' Motion to Strike.

part of the record. Neither the Amended Form 30 nor its attachments have ever been admitted into the Commission record or substantively considered by the Appellate Panel. (See Appellate Panel Decision and Order, dated December 19, 2013, Att. B to Motion to Strike, p. 6).

Appellant's reliance on Terry v. South Carolina Dept. of Health & Env'tl Control, 377 S.C. 569, 660 S.E.2d 291 (Ct. App. 2008), does not dictate a different outcome. The language cited by Appellant simply sets forth the appellate process for agency decisions – in that case the procedures applicable to OCRM prior to 2006. Terry does not stand for the proposition that any evidence, whether admitted into the record below or not, is properly included in an appellate record. Similarly, merely stating an issue on appeal does not mean that the issue is properly preserved or that related evidence has been admitted below and/or should be considered by an appellate court. As Appellant acknowledges, under the Administrative Procedures Act, appellate review “must be confined to the record.” S.C. Code Ann. § 1-23-380(4).

As to Appellant's due process argument, procedural due process “is flexible and calls for such procedural protections as the particular situation demands.” Jones v. South Carolina Dept. of Health & Env'tl Contr., 384 S.C. 295, 316, 682 S.E.2d 282, 294 (Ct. App. 2009). All that due process “requires [is] (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses.” Clear Channel Outdoor v. City of Myrtle Beach, 372 S.C. 230, 235, 642 S.E.2d 565, 567 (2007). Appellant has been provided: 1) adequate notice of all hearings; 2) two hearings before the Single Commissioner and one before the Full Commission; 3) the right to introduce evidence pursuant to

the Commission's regulations (discussed in more detail below); and 4) the right to confront and question hearing witnesses. Thus, there is no evidence that the Commission has violated Appellant's due process rights.

Section 42-3-30 authorizes the Commission to "promulgate all regulations relating to the administration of the workers' compensation laws of this State necessary to implement the provisions of this title and consistent therewith." S.C. Code Ann. § 42-3-30. Pursuant to this authority, the Commission has issued regulations that require parties to present all of their evidence at the hearing before the Single Commissioner. S.C. Code Reg. § 67-613(A). Under certain circumstances, after a matter has been heard by the single commissioner, the Full Commission may, "if good grounds be shown therefore, ... receive further evidence, rehear the parties or their representatives and, if proper, amend the award." S.C. Code Ann. § 42-17-50; *see also* S.C. Code Reg. § 67-707, which provides that "[w]hen additional evidence is necessary for the completion of the record in a case on review the Commission may, in its discretion, order such evidence taken before a Commissioner."² Here, Appellant did not move to have the new evidence attached to his Amended Form 30 admitted before the Full Commission³ but, instead, attempted to submit this material via an ineffective Amended Form 30 that was untimely and unaccompanied by any filing fee.

Thus, Appellant's Amended Form 30 and attachments must be stricken from Appellant's Initial Brief and from his Designation of matter. Alternatively, to the extent

² Appellant apparently misunderstands Watson v. Xtra Mile Driver Training, Inc., 399 S.C. 455, 732 S.E.2d 190 (Ct. App. 2012), which upheld the Commission's admission of an FCE. Although Watson confirms that the rules of evidence are not strictly applied in hearings before the Commission, it does not stand for the proposition that every piece of evidence submitted by a party before the Commission must be admitted regardless of the reliability, timing or relevance of the submission.

³ Clearly, Appellant knew how to file motions to admit newly discovered evidence, as he filed several such motions with the Commission.

this Court finds that Appellant's Amended Form 30 should be included in the Record on Appeal for the limited purpose of determining whether the Commission properly declined to consider it, any references and/or reliance on the Amended Form 30 and its attachments should be limited to that issue.

With respect to Paragraphs 4-15, Respondents agree that these items are reasonably identified with the clarifications provided by Appellant. However, the motions described in Paragraphs 12, 13, 14, 19 and 20 were denied and, as discussed in more detail below, their attached documents never were admitted into the record before the Commission.

The motion dated May 6, 2013 and filed on May 9, 2013, referenced in Paragraphs 12, 19 and 20, (Att. F), was denied by the Commission. (Att. G). The motion dated May 10, 2013 and filed on May 14, 2013, referenced in Paragraph 13, (Att. H), was similarly denied by the Commission. (Att. I). The same is true for the materials attached to Appellant's Motion for penalties, dated June 11 and filed June 14, 2013, (Att. J), which was denied on August 12, 2013. (Att. K). All of these materials were never admitted into the record, or considered substantively by the Commission at any level. This non-record material must be stricken from Appellant's designation and he must be ordered to delete the portions of his Initial Brief that substantively rely on such non-record materials.

With respect to Paragraphs 17 and 21, Respondents note that the letter provided by Appellant, listed as "Exhibit C" to his Opposition, did not include the attachments, which Respondents' file does not indicate ever were received by them. In addition, simply mailing these materials under cover of a letter addressed to Ms. Virginia Crocker

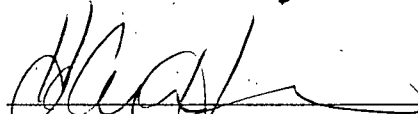
was insufficient to have these materials included in the Commission record for consideration. The same is true for the letter referenced in Paragraph 16 in that, in both instances, Appellant neither filed a motion nor made any other attempt to have these materials included in the Commission's record. This non-record material must be stricken from Appellant's Designation and he must be ordered to delete the portions of his Initial Brief that substantively rely on such non-record materials.

CONCLUSION

For the reasons stated herein, Respondents move this Court to strike all non-record material from Appellant's Designation and Initial Brief. This includes items in Paragraph Nos. 1-3, 12-14, 16, 17, and 19-21. In addition, Respondents repeat their request that the briefing schedule be stayed while the Court considers its Motion as revised by this Reply.

June 5, 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. F

John C. McDaniel

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

May 6, 2013

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

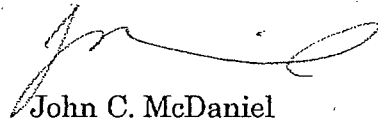
RE: John C. McDaniel v. Career Employment Professional d/b/a Snelling Staffing
DOI: 11/21/2011
WCC File: 1116275

Dear Counsel,

Enclosed for service, please find the Claimant's Motion for Additional Evidence and Notice of Additional APA Submission for the above referenced claim, which are being sent to the Commission for filing.

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

Thank you,



John C. McDaniel

John C. McDaniel

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

May 6, 2013

Via US Mail

Virginia Crocker, Judicial Director
S.C. Workers Compensation Commission
Post Office Box 1715
Columbia, SC 29292-1715

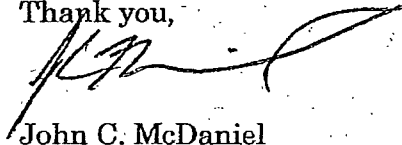
RE: John C. McDaniel v. Career Employment Professional d/b/a Snelling Staffing
DOI: 11/21/2011
WCC File: 1116275

Dear Ms. Crocker,

Enclosed please find the original and one copy of the Claimant Motion for Additional Evidence and Notice of Additional APA Submissions for the above referenced claim. Please file the original and return a clocked copy to me in the enclosed self-addressed stamped envelope provide.

If you have any questions, please do not hesitate to call. Thank you in advance for your assistance in this matter.

Thank you,



John C. McDaniel

CC: R. Mark Davis (via US Mail)

South Carolina Workers Compensation Commission
W.C.C. File No: 1116275

John McDaniel
employee
Claimant

Snelling Staffing Services
employer

And

United Wisconsin Insurance Company c/o
United Heartland
Carrier

Defendant

Claimant's Motion for additional
Evidence to Complete the Record and
Notice of Additional Evidence and
Additional APA Submissions on
behalf of the Claimant

WILL YOU PLEASE TAKE NOTICE that the undersigned hereby submit this Motion for Additional Evidence for completion of the records and Notice of Additional Evidence and Additional APA Submission under S.C. Code Ann. § 1-23-320 of the Administrative Procedures Act and Regulation 67-707(A). The Claimant requests the Commission to allow additional evidence to complete the record.

The Claimant contends that the evidence sought to be introduced is not evidence of a cumulative nature but would likely have produced a different result had the evidence been submitted.

The Claimant contends that the evidence was not known to him to have been excluded from the record at the time of the first hearing and the Additional Evidence and APA Submission is being brought to the attention of the Commission immediately.

Pursuant to S.C. Code Ann § 1-23-320(E) Opportunity must be afforded all parties to respond and present evidence and argument on all issues involved.

Pursuant to SC Code Ann. §42-3-20 (C) The commissioners shall hear and determine all contested cases, conduct informal conferences when necessary, approve settlements,

hear applications for full commission reviews, and handle such other matters as may come before the department for judicial disposition.

Pursuant to Regulation 67-707(A) when additional evidence is necessary for completion of the record in an case on review the Commission may order such evidence taken before a Commissioner.

Upon information and belief former Counsel for the Claimant received a copy of the Claimant complete personnel file from the Defendant's attorney on or around August 10, 2012.

The Claimant was of the understanding that through either his former counsel or the Defendant's counsel a copy of his personnel file had been submitted to the Commission.

The Claimant contends that he had discussion with his former attorney and his office staff regarding the submission of these records. The Claimant contends that he was assured that these records would be introduced to the Commission as part of the record.

The Claimant was unaware that these records were not submitted as part of the record or as part of the APA Submissions.

The Claimant contends that these records show his qualifications and skills and would have resulted in a difference decision by the Commissioner.

The Claimant contends that letters and emails regarding late payments and treatment were exchanged by his former counsel and the Defendant's Counsel.

The Claimant contends that he had discussions with and made it clear to his former attorney that he would like to seek penalties for late payment, under payments, late treatment and non-approval of treatment prescribed by his treating physician.

The Claimant at some point was advised that penalties, at the discretion of the Commission, may go into a worker's compensation fund. They Claimant still expressed the

desire to seek penalties regardless of receipt of monetary compensation resulting from penalties.

The Claimant advised his former attorney that he had numerous emails and applications that he had submitted inquiring about numerous sedentary positions.

The Claimant relied on the advice and expertise of his former counsel regarding the submissions of records and APA submissions.

The Claimant further contends that under the avoidable consequences doctrine the Claimant has a responsibility to attempt to minimizing damages and should make reasonable efforts to mitigate the effects of any breach of contract or possible damages resulting in these records not being submitted into the APA submissions.

Pursuant to *Watson v. Xtra Mile, S.C. Ct.App. Opinion No: 5013*, the SC Rules of Evidence do not apply in proceedings before the Workers Compensation Commission. The Workers Compensation Commission is allowed wide latitude of procedures and is not restricted to the strict rules of evidence applied to judicial courts. Further the Appellant holds the burden of proof and must place in the record a sufficient foundation for his argument.

The Claimant contends that the submission of these records would have resulted in as a different decision of the Single Commissioner.

The Claimant requests the Commission to allow the additional evidence and additional APA Submission and notifies the Commission and Defendants' Counsel of the below additional evidence and APA Submission on behalf of the Claimant:

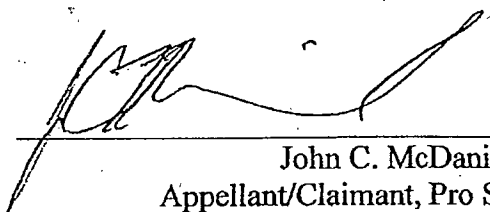
Claimant's Additional Evidence and Additional APA Submission

11.	Claimant's Personnel file	126-164
12	Letter of Recommendation	165
13.	Job Applications sent for sedentary work; June 29, 2012-August 22, 2012	166-189

14.	Emails to/from John McDaniel/Jim Pascutti (employer) regarding updated resume for sedentary work & possible work available	190-195
15.	Email from John McDaniel re: CDL driving position & Email response from Angela Baldwin, Snelling Staffing dated 5/5/2011 & 5/6/2011	196-198
14.	Letter from Tom White to Richard Romero re: no work received due to restrictions dated 7/5/2012	199
15.	Letter from Tom White to Alison Nussbaum regarding payments due from June dated 7/23/2012.	200
16.	Email from Lori Beck to Tom White regarding TTD benefits dated 7/23/2012	201
17.	Email chain w/ Attachment from Elizabeth Dale to Tom White and Alison Nussbaum re: payment's not yet received and miscalculation on Form 20 dated 7/27/2012	202-204
18.	Email from Allison Nussbaum regarding pain management & work available within restrictions dated 9/13/2012	205
19.	Letter from Tom White to Alison Nussbaum re: pain management dated 10/5/2012	206
20.	Email from Alison Nussbaum dated 10/10/2012 to Tom White re: pain management & orthodox	207
23.	TTC Policy Appeal w/ letter dated 5/31/12 to Dawn Baily re: previous inquires & unpaid benefits.	208-209

Conclusion

For the foregoing reasons, as well as any other Rule, case law, statute or authority as may be applicable; The Claimant moves this Commission to allowed the above additional evidence and additional APA Submissions in order to allow the Claimant to remedy the situation in an attempt to mitigate possible damages and allow the Claimant to submit these additional documents into the record under the Administrative Procedures Act.


 John C. McDaniel
 Appellant/Claimant, Pro Se
 (Former Class A CDL Driver & General Laborer)

South Carolina Workers Compensation Commission

W.C.C. File No: 1116275

John McDaniel
employee

Claimant

Snelling Staffing Services
employer

Certificate of Service

And

United Wisconsin Insurance Company c/o United
Heartland
Carrier

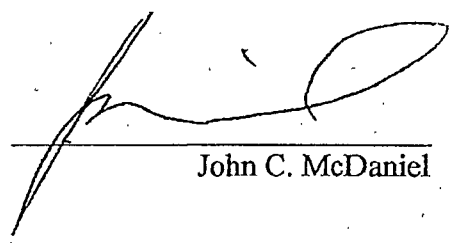
Defendant

I hereby certify that I had on May 6, 2013 served a copy of Claimant's Motion for additional evidence and notice of additional evidence and APA submission by depositing a true copy of same in the U.S. Mail, proper postage prepaid, addressed to counsel of record as follows:

Counsel for the Defendants:

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

SC Workers Compensation Commission
PO Box 1715
Columbia, SC 29202-1715



John C. McDaniel

Att. G

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
JUDICIAL CONFERENCE DECISION AND ORDER

John McDaniel v Career Employment Professionals
SCWCC: 1116275
Commissioner: James

This matter was heard before the South Carolina Workers' Compensation Full Commission in Judicial Conference. The Commissioners considered the matter and ordered the matter handled in the following manner:

IT IS, THEREFORE, ORDERED the pending appeal of the Administrative Order of the Commission is hereby;

Dismissed as Interlocutory. Set for Oral Argument.

IT IS, THEREFORE, ORDERED the pending Motion for Additional Evidence Dated May 6, 2013 be, and hereby is;

Granted. Denied. Dismissed Set for Hearing.

BEFORE THE;

Hearing Comm. Jurisdictional Comm. Full Commission.

IT IS, THEREFORE, ORDERED this matter be, and hereby is; remanded to take such action and enter an Order consistent with the Court's directive.

Remand to Panel as indicated below.

Barden
 Beck

James
 Roche
 McCaskill

Taylor
 Wilkerson

Remand for Order consistent with the Order of the Court.

Remand to the Hearing Commissioner.

Remand to the Jurisdictional Commissioner.

Other: _____

Remand:

Panel Oral Argument.

En Banc Oral Argument.

AND IT IS SO ORDERED.


T. Scott Beck, Chair

Columbia, South Carolina

6/17 2013

CONCURRING:

Commissioner Susan S. Barden
Commissioner Melody James
Commissioner Aisha Taylor
Commissioner Avery Wilkerson
Commissioner Andrea C. Roche
Commissioner Gene McCaskill

NOT PARTICIPATING:

 X

DISSENTING:

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY THE UNDERSIGNED HAS THIS DATE SERVED THIS ORDER IN THE ABOVE ENTITLED ACTION UPON ALL PARTIES ELECTRONICALLY OR BY DEPOSITING A COPY HEREOF, POSTAGE PAID, IN THE UNITED STATES MAIL.

This 17 day of June, 2013.

By: Valerie D. Adler
SCWCC Judicial Department

John McDaniel (Reg & Cert)
R. Mark Davis

Att. H

John C. McDaniel

1387 Camp Road, Unit C, Charleston SC 29412

Phone Number: 843-425-3000

Email: jmcDaniel1982@gmail.com

May 10, 2013

Via US Mail

Virginia Crocker, Judicial Director
S.C. Workers Compensation Commission
Post Office Box 1715
Columbia, SC 29292-1715

RE: John C. McDaniel v. Career Employment Professional d/b/a Snelling Staffing

DOJ: 11/21/2011

WCC File: 1116275

Dear Ms. Crocker,

Enclosed please find the original and one copy of the Appellant/Claimant's Motion for additional evidence and testimony to complete the record. Please file the original and return a clocked copy to me in the enclosed self-addressed stamped envelope provide.

If you have any questions, please do not hesitate to call. Thank you in advance for your assistance in this matter.

Thank you,



John C. McDaniel

CC: R. Mark Davis (via US Mail)

The Claimant contends that the attorney for the Defendant questioned him on various activities initially addressed in the Claimant's deposition testimony to include but not limited to moving since his injury. The Claimant's replied that he had moved from an apartment to a townhouse since his injury and responded to various questions related to activities initially addressed in his deposition.

The Claimant contends that there were a number of questions that the Defendant's attorney asked him regarding household duties and other physical activities, in which the Claimant's response was brief with the assumption that his deposition testimony was part of the records and that the Single Commissioner would review his deposition testimony in its entirety.

The Claimant contends that had the Commissioner had his entire deposition testimony that there would have been further explanations of such activities. The Claimant contends that his former attorney instructed him to be brief with responses to questions. The Claimant further contends that his former attorney should have redirected this line of questioning for further explanation knowing that the Claimant's deposition testimony was not part of the record.

Pursuant to S.C. Code Ann § 1-23-320(E) Opportunity must be afforded all parties to respond and present evidence and argument on all issues involved.

Pursuant to SC Code Ann. §42-3-20 (C) The commissioners shall hear and determine all contested cases, conduct informal conferences when necessary, approve settlements, hear applications for full commission reviews, and handle such other matters as may come before the department for judicial disposition.

Pursuant to Regulation 67-707(A) when additional evidence is necessary for completion of the record in a case on review the Commission may order such evidence taken before a Commissioner.

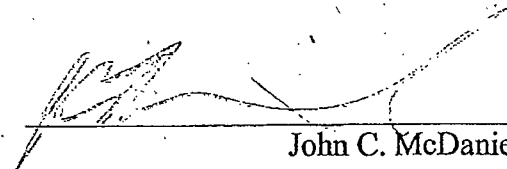
The Claimant further contends that under the avoidable consequences doctrine the Claimant has a responsibility to attempt to minimizing damages and should make reasonable efforts to mitigate the effects of any breach of contract or possible damages resulting in these records not being submitted into the APA submissions.

Pursuant to *Watson v. Xtra Mile, S.C. Ct.App. Opinion No: 5013*, the SC Rules of Evidence do not apply in proceedings before the Workers Compensation Commission. The Workers Compensation Commission is allowed wide latitude of procedures and is not restricted to the strict rules of evidence applied to judicial courts. Further the Appellant holds the burden of proof and must place in the record a sufficient foundation for his argument.

The Claimant requests the Commission to allow the additional evidence and testimony and notifies the Commission and Defendants' Counsel of the below additional evidence and testimony.

Conclusion

For the foregoing reasons, as well as any other Rule, case law, statute or authority as may be applicable; The Claimant moves this Commission to allowed the above additional evidence and the deposition testimony of the Claimant into the records in order to allow the Claimant to remedy the situation in an attempt to mitigate possible damages and allow the Claimant to submit this additional testimony.


John C. McDaniel
Appellant/Claimant, Pro Se
(Former Class A CDL Driver & General Laborer)

South Carolina Workers Compensation Commission

W.C.C. File No: 1116275

John McDaniel
employee

Claimant

Snelling Staffing Services
employer

Certificate of Service

And

United Wisconsin Insurance Company c/o United
Heartland
Carrier

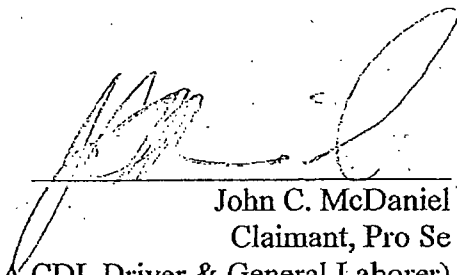
Defendant

I hereby certify that I had on May 10, 2013 served a copy of Appellant's Motion for additional evidence and deposition testimony to complete the record by depositing a true copy of same in the U.S. Mail, proper postage prepaid, addressed to counsel of record as follows:

Counsel for the Defendants:

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

SC Workers Compensation Commission
PO Box 1715
Columbia, SC 29202-1715


John C. McDaniel
Claimant, Pro Se
(Former Class A CDL Driver & General Laborer)

Att. I

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
JUDICIAL CONFERENCE DECISION AND ORDER

John McDaniel v Career Employment Professionals
SCWCC: 1116275
Commissioner: James

This matter was heard before the South Carolina Workers' Compensation Full Commission in Judicial Conference. The Commissioners considered the matter and ordered the matter handled in the following manner:

IT IS, THEREFORE, ORDERED the pending appeal of the Administrative Order of the Commission is hereby;

Dismissed as Interlocutory. Set for Oral Argument.

IT IS, THEREFORE, ORDERED the pending Motion for Additional Evidence Dated May 10, 2013 be, and hereby is;

Granted. Denied. Dismissed Set for Hearing.

BEFORE THE;

Hearing Comm. Jurisdictional Comm. Full Commission.

IT IS, THEREFORE, ORDERED this matter be, and hereby is; remanded to take such action and enter an Order consistent with the Court's directive.

Remand to Panel as indicated below.

<input type="checkbox"/> Barden	<input type="checkbox"/> James	<input type="checkbox"/> Taylor
<input type="checkbox"/> Beck	<input type="checkbox"/> Roche	<input type="checkbox"/> Wilkerson
	<input type="checkbox"/> McCaskill	

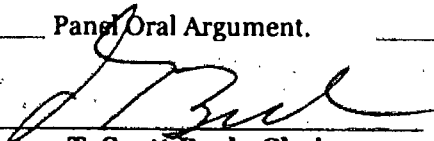
Remand for Order consistent with the Order of the Court.

Remand to the Hearing Commissioner.
 Remand to the Jurisdictional Commissioner.

Other: _____

Remand: Panel Oral Argument. En Banc Oral Argument.

AND IT IS SO ORDERED.


T. Scott Beck, Chair

Columbia, South Carolina

6/17 2013

CONCURRING:

Commissioner Susan S. Barden
 Commissioner Melody James
 Commissioner Aisha Taylor
 Commissioner Avery Wilkerson
 Commissioner Andrea C. Roche
 Commissioner Gene McCaskill

NOT PARTICIPATING:

X

DISSENTING:

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY THE UNDERSIGNED HAS THIS DATE SERVED THIS ORDER IN THE ABOVE ENTITLED ACTION UPON ALL PARTIES ELECTRONICALLY OR BY DEPOSITING A COPY THEREOF, POSTAGE PAID, IN THE UNITED STATES MAIL

This 17 day of June, 2013. John McDaniel (Reg: cert)
 By: Valerie D Deller R Mark Davis
 SCWCC Judicial Department

Att. J

John C. McDaniel

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

June 11, 2013

Via US Mail

Virginia Crocker, Judicial Director
S.C. Workers Compensation Commission
Post Office Box 1715
Columbia, SC 29292-1715

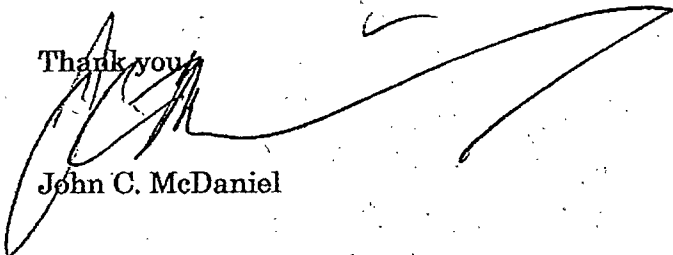
RE: John C. McDaniel v. Career Employment Professional d/b/a Snelling Staffing
DOI: 11/21/2011
WCC File: 1116275

Dear Ms. Crocker,

Enclosed please find the original and one copy of the Claimant Motion for Penalties and Sanctions for Failure to Provide Treatment and Failure to Provide Treatment in a timely manner for the above referenced claim, along with the \$25.00 filing fee. Please file the original and return a clocked copy to me in the enclosed self-addressed stamped envelope provide.

If you have any questions, please do not hesitate to call. Thank you in advance for your assistance in this matter.

Thank you,


John C. McDaniel

CC: R. Mark Davis (via US Mail)

5) On 2/20/12 Dr. Ohlson states that claimant is attempting to facilitate both treatments through Steinberg Law Firm (see attached report 2/20/12)

6) The Claimant and his former attorney attempted to facilitate wound treatment and physical therapy in a timely manner. (see attached affidavit)

7) The Claimant contacted Snelling Staffing regarding his frustration with United Heartland with regards to approving physical therapy, along with wound treatment this was notated in the Claimant's master dossier. (See attached dossier)

8) The Claimant contends that on 2/27/12 physical therapy was received and the Claimant began treatment at Rehabilitation Center of Charleston.

9) The Claimant contends that his 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" (See attached RCC report dated 2/27/12)

10) The claimant contends physical therapy was delayed without cause for a second period from 4/10/12 till 5/1/12.

11) The claimant contends that this second delay was also detrimental to his recovery and has increased the extent and duration of his disability.

12) The claimant contends that if these sessions of physical therapy had been approved timely, treatment could have foreseeably mitigated deformities of hammer toe (2nd-5th toes) and pes planus.

13) The Claimant informed Dr. Olson of his continuing attempt to facilitate wound therapy during and prior to the follow up visit 4/2/12. (See attached Report)

14) The Claimant contends that wound therapy, as recommended and prescribed by Dr. Olson, was never approved and/or denied by United Heartland.

15) The Claimant contends that this denial has led to permanent disfigurement, resulting in an unsightly, scared and discolored left foot.

16) The Claimant discussed the decision to not proceed with surgery with Dr. Olson on 5/14/12.

17) The Claimant contends that Dr. Olson explained that surgery was not feasible if his wound was open. (See attached report dated 5/14/12)

18) Dr. Olson's reported dated 4/2/2012 states that there is no longer need for wound therapy.

19) Rehabilitation Centers of Charleston's, physical therapy notes from 6/26/12 state that the wound is nearly healed. (See attached physical therapy notes)

20) The Claimant contends that due to not receiving wound therapy, the Claimant's wound remained open at least until 6/26/12 resulting in Dr. Olson not proceeding with surgery.

21) The Claimant contends that his permanent disability and recovery were affected by Defendants not authorizing or facilitating wound treatment.

22) The Claimant's contends that not authorizing wound treatment contributed to the Claimant's permanent restrictions, disability and other medical issues.

23) The Claimant contends that not receiving wound therapy has hindered his rehabilitation and amplified his permanent disability due to this injury.

24) Dr. Olson's report dated 5/14/12 recommends and prescribes Chronic Pain Management.

25) The Claimant attempted to facilitate and receive Chronic Pain Management as prescribed by Dr. Olson.

26) The Claimant first received Chronic Pain Management on 10/30/12.

27) Dr. Ohlson first recommended and prescribed orthotics on 7/2/12.

28) United Heartland also delayed this until, on or after, 11/1/12.

29) Pursuant to *Martin v. Rapid Plumbing*, 631 SE 2d 547 "The statute sets the time of the penalty as beginning with the failure to comply with section 42-9-260 and continuing for as long as the benefits are wrongfully withheld."

30) Pursuant to *Cruiel v. Environmental* the Claimant can be held liable and penalized for being a hindrance on his rehabilitation affecting the extent and duration of disability.

31) The claimant contends the contrapositive of the above must be applied in this case, therefore, the carrier must be held liable, and penalized, for being a hindrance on the Claimant's recovery. The Claimant contends that equity follows the law and Defendants' shall also be held liable for non-compliance.

32) *Watson v. Xtra Mile* states that equity follows the law; as such, penalties must be applied as the carrier in the instant case has hindered the Claimant's recovery and contributed to the extent and duration of disability.

33) *Brown v. BI-LO* states that treating physicians are compelled to communicate all relevant facts and medical records to the employer.

34) The Claimant contends Dr. Ohlson was not in violation of this. Thus, the Defendants possessed all necessary documents to authorize these treatments.

35) The claimant contends that the record as a whole contains substantial evidence to support the carrier has willfully, and with malice, failed to provide medical care as directed and must be penalized.

36) The claimant contends that penalties are of a punitive nature and must be applied as to discourage this behavior and conduct.

37) The claimant contends that Title 42 & 38 mandate care be provided.

38) A prescription is deemed an order of treatment as the SC Workers Compensation Code provides that employers shall provide medical care associated with the injury.

39) Pursuant to 43-3-175(2), Willful disobedience of an order can be punished by up to \$500 per day fine.

40) These actions affected the claimant significantly.

41) Sanctions imposed in this matter should include compensation to the claimant.

42) These sanctions are not limited in scope by 43-3-175 (A)(1).

43) Pursuant to 42-3-175(A)(2) the Department of Insurance must be notified of an insurer's or an adjustor's failure to authorize and pay benefits for medical treatment.

44) Pursuant to 38-55-570 (A) the office of the Attorney General must be informed of the same actions/inactions via notification to the Fraud Department of the same.

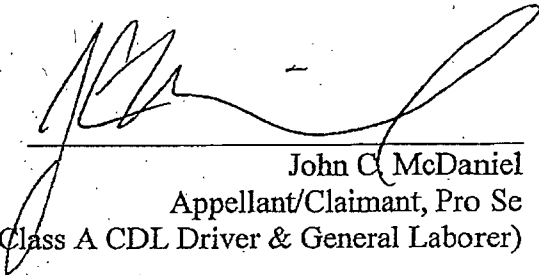
45) The Claimant contends that penalties should be enforced in the below amount for failure to provide medical treatment and failure to provide medical treatment in a timely manner.

46) The Claimant contends that sanctions applied on his behalf should also reflect the below computations.

TREATMENT	PRESCRIBED	RECEIVED/ APPROVED	DAYS	\$500 PER DAY
Physical Therapy	1/9/12	2/27/12	49	\$24,500.00
		5/1/12	21	\$10,500.00
Wound Treatment	1/27/12	Never Received; 4/02/12	65	\$32,500.00
		6/27/12-healed	96	\$48,000.00
Pain Management	5/14/12	10/30/12	169	\$84,500.00
Orthotics	7/02/12	On or after 11/1/12	121	\$60,500.00

Conclusion

For the foregoing reasons, as well as any other Rule, case law, statute or authority as may be applicable, whereas; the commission has authority to access sanctions, and to double all fines and penalties; 1)The Claimant moves this Commission to enforce penalties on Respondents equal to the maximum allowable, and 2) Sanctions paid to the claimant in the equal amount, or in the alternative, an amount seen fit by the commission of not less than 1/10th the maximum per occurrence, per day, and/or 3) hold an evidentiary hearing on the merits of this motion alone, allowing this issue to be adjudicated fairly, and 4) report this failure to provide treatment to the Department of Insurance and the Fraud Division of the Attorney General for further compliance investigation.



John C. McDaniel
Appellant/Claimant, Pro Se
(Former Class A CDL Driver & General Laborer)

Att. K

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
JUDICIAL CONFERENCE DECISION AND ORDER

John McDaniel v Career Employment Professionals
SCWCC: 1116275
Commissioner: James

This matter was heard before the South Carolina Workers' Compensation Full Commission in Judicial Conference. The Commissioners considered the matter and ordered the matter handled in the following manner:

MOTION FOR PENALTIES AND SANCTIONS

IT IS, THEREFORE, ORDERED the pending appeal of the Administrative Order of the Commission is hereby;

Dismissed as Interlocutory. Set for Oral Argument.

IT IS, THEREFORE, ORDERED the pending motion be, and hereby is;
 Granted. Denied. Dismissed Set for Hearing.

BEFORE THE;
 Hearing Comm. Jurisdictional Comm. Full Commission.

IT IS, THEREFORE, ORDERED this matter be, and hereby is; remanded to take such action and enter an Order consistent with the Court's directive.

Remand to Panel as indicated below.
 Barden James Taylor
 Beck Roche Wilkerson
 McCaskill

Remand for Order consistent with the Order of the Court.
 Remand to the Hearing Commissioner.
 Remand to the Jurisdictional Commissioner.
 Other: _____

Remand: Panel Oral Argument. En Banc Oral Argument.

AND IT IS SO ORDERED.

Columbia, South Carolina

8/12 2013



T. Scott Beck, Chair

CONCURRING:

Commissioner Susan S. Barden
Commissioner Melody James
Commissioner Aisha Taylor
Commissioner Avery Wilkerson
Commissioner Andrea C. Roche
Commissioner Gene McCaskill

NOT PARTICIPATING:

DISSENTING:

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY THE UNDERSIGNED HAS THIS DATE SERVED THIS ORDER IN THE ABOVE ENTITLED ACTION UPON ALL PARTIES ELECTRONICALLY OR BY DEPOSITING A COPY THEREOF, POSTAGE PAID, IN THE UNITED STATES MAIL.

This 12 day of August, 2013.

By: Valence D. Beller
SCWCC Judicial Department

John C McDaniel (Req cert)
R. Mark Davis
Muson Nussbaum

RECEIVED

JUN 09 2014

SC Court of Appeals

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,

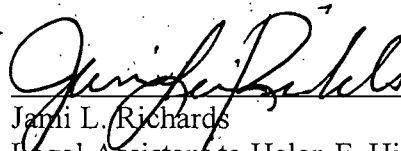
v.

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

PROOF OF SERVICE

I certify that on the 5th day of June 2014, I served the Respondents' **Reply to Appellant's Response in Opposition to Motion to Strike and/or Amend** 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



Jani L. Richards
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.*

Reply To

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

RECEIVED

JUN 09 2014

June 5, 2014 **SC Court of Appeals**

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' Reply to Appellant's Response in Opposition to Motion to Strike and/or Amend, 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.

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

Yours truly,

McAngus Goudelock & Courie, LLC



Helen F. Hiser

Enclosures

cc: John C. McDaniel, *Pro Se*

