

South Carolina Workers' Compensation Commission  
1612 Marion St.  
P.O. BOX 1715  
Columbia, SC 29202-1715  
803-737-5675



Carrier File #: L16755  
Carrier Code #: 148-N  
Employer FEIN #: \_\_\_\_\_

Claimant's Name: Ricky Kneece SSN: 250 - 11 - 3236 Employer's Name: Kneece Farms  
Address: 204 Delano Kneece Road Address: 1752 Juniper Springs Road  
City: Pelion State: SC Zip: 29123 City: Gilbert State: SC Zip: 29054  
Home Phone: ( ) - Work Phone: ( ) - Insurance Carrier: Legion Insurance Company/SCIGA  
Preparer's Name: Mark D. Cauthen, Esquire Law Firm: McKay, Cauthen, Settan & Stublely Preparer's Phone #: (803) 256 - 4645

**REQUEST FOR COMMISSION REVIEW**

Request for Commission Review by  claimant  employer (check one) Date of injury: 11/22/1999 (m/d/yyyy)

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.**

SCWCC  
MAY 17 2011  
JUDICIAL

SCWCC  
MAY 17 2011  
JUDICIAL

(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 Scott Elliott, Esquire; Name

Elliott & Elliott 1508 Lady Street, Columbia, SC 29201; SCWCC, Virginia Crocker, Judicial Director, South Carolina Workers' Compensation Commission, P.O. Box 1715, Columbia, SC 29202 Address

on the 12th day of May, by  first class mail  personal service  certified mail.

Mark D. Cauthen Attorney at Law Title May 12, 2011 Date  
Preparer's Signature

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.

RECEIVED  
REQUEST FOR COMMISSION REVIEW

STATE OF SOUTH CAROLINA	)	BEFORE THE SOUTH CAROLINA
	)	WORKERS' COMPENSATION
COUNTY OF CALHOUN	)	COMMISSION
	)	
	)	WCC FILE NO. 9920867
Ricky Kneece,	)	
	)	
Claimant/Respondent,	)	
	)	
vs.	)	
	)	<b>FORM 30 ADDENDUM OF</b>
Kneece Farms,	)	<b>DEFENDANTS KNEECE FARMS AND</b>
	)	<b>THE SOUTH CAROLINA PROPERTY</b>
Employer,	)	<b>&amp; CASUALTY INSURANCE</b>
	)	<b>GUARANTY ASSOCIATION</b>
and	)	
	)	
Legion in liquidation/SCPCIGA,	)	
	)	
Carrier,	)	
	)	
<u>Defendants/Appellants.)</u>	)	

The above captioned case was heard before Commissioner Derrick L. Williams on February 14, 2011. Commissioner Williams issued an Order determining the disputed issues among the parties on April 28, 2011. The Defendants/Appellants herein appeal the hearing Commissioner's findings and conclusions based on the following grounds for exception:

1. Whether the hearing Commissioner erred in overruling and denying the Defendants motion at the hearing to exclude the Claimant's Exhibit No. 4 as to certain payroll records, the error being these records were irrelevant to the issues before the Commission and were offered without a proper foundation?
  
2. Whether the hearing Commissioner erred as a matter of law in overruling and denying the Defendants motion to compel the Claimant to submit to an examination by a neurologist, and to postpone the hearing to permit time for such an examination, or in the alternative, erred as a matter of law a matter of law in permitting the Claimant to submit his own neurologist's reports while denying the opportunity to the Defendants to obtain the same?

3. Whether the hearing Commissioner erred in relying on evidence in the case that Claimant's wife (Roxanne Kneece) had been working on Delano R. Kneece & Son Farms, "since her husband's injury," when her employment with the Farm actually started after her mother in law stopped working for the farm and this finding is therefore inconsistent with the evidence.
4. Whether the hearing Commissioner erred in relying on evidence in the record regarding, the Claimant's familiarity with the farm finances vis a vis the fact that, "since the accident he is unable to manage the farm's finances," when the evidence indicated that the Claimant never actually managed the Farm's finances before or after his injury, nor served as its accountant/bookkeeper, as that job was handled by the Claimant's mother and his wife both before and after this accident?
5. Whether the hearing Commissioner erred in relying on evidence in the record that Kain Kneece, Claimant's son, now performs 95% of the duties that were performed by his father prior to the accident , when the Claimant simultaneously presented evidence that, (a) he still works more than eight hours per day as much as seven days a week, (b) several other farm hands – other than his adult son Kain – have had to be hired to perform the jobs that he, the Claimant, used to do prior to his accident, and (c) every manner of expensive new equipment has had to be purchased by the Delano R. Kneece & Son since the Claimant's accident in order to perform the tasks that Mr. Ricky Kneece used to perform for the farm?
6. Whether the hearing Commissioner erred in finding the existence and compensability of injuries to Claimant's zygomatic arch, thyroid, scarring and finger, the error being that Claimant failed to allege these injuries prior to the initial hearing before the Commission on January 11, 2005, these alleged injuries were not included in the Commission's prior order, and the Claimant is therefore barred from now raising these injuries by principles of *res judicata*, collateral estoppel, and/or law of the case?
7. Whether the Commissioner erred in giving no weight to the report of vocational rehabilitation specialist Cynthia P. Grimley, the error being that Mrs. Grimley is a

qualified expert in the field of vocational assessment and evaluations with many years of experience and training in that field?

8. Whether the hearing Commissioner erred in finding as a fact, and/or concluding as a matter of law, that the Claimant's weight gain and hypothyroidism are causally related to and resulting from his compensable 1999 head injury, and that the Defendants are responsible for such treatment with Dr. Wicker and/or Dr. White for such treatment, when such findings are against the greater weight of the evidence in the record, and contrary to South Carolina law?
9. Whether the hearing Commissioner erred in finding as a fact, and/or concluding as a matter of law, that the Claimant's treatment with Dr. Shissias is causally related to the 1999 accident and resulting injuries, when such a finding is against the greater weight of the evidence in the record, and contrary to existing South Carolina case law?
10. Whether the hearing Commissioner erred in finding as a fact, and/or concluding as a matter of law, that the Claimant's fall and fractured left metacarpal, and resulting treatment with Dr. Ugino is casually related to this 1999 accident and claim for benefits, when such findings are against the greater weight of the evidence in the record, and contrary to South Carolina law?
11. Whether the hearing Commissioner erred in finding as a fact, and/or concluding as a matter of law, that the Claimant is entitled to additional treatment based on the medical evidence and opinions of Dr. Shissias, the error being that such findings are against the greater weight of the evidence in the record, and contrary to South Carolina law where the Defendants were precluded from the opportunity to obtain an evaluation of the Claimant with a neurologist prior to the hearing, particularly considering Defendant's motion to compel the same?
12. Whether the hearing Commissioner erred in finding as a fact, and/or concluding as a matter of law, that the work performed by the Claimant with Delano R. Kneece & Son is sheltered employment that is benevolent in nature, the error being that such findings are against the greater weight of the evidence in the record, and contrary to South Carolina

law, where the Claimant was not injured while working for Delano R. Kneece & Son, the Claimant has not worked for his employer, Kneece Farms, in any capacity since his injury and evidence of subsequent employment with another employer is irrelevant to a determination of this issue?

13. Whether the hearing Commissioner erred in finding as a fact, and/or concluding as a matter of law, that the work performed by the Claimant with Delano R. Kneece & Son is not substantial or beneficial to the farm, the error being that such findings are against the greater weight of the evidence in the record, and contrary to South Carolina law where the Claimant has consistently worked in excess of 40 per week for the farm and, per his own testimony, and continues to perform similar duties with a similar work schedule as he did prior to this accident?
14. Whether the hearing Commissioner erred in finding as a fact, and/or concluding as a matter of law, that the only basis for the Claimant obtaining a paycheck from the farm is the largesse of his family, the error being that such findings are against the greater weight of the evidence in the record, and contrary to South Carolina law where the Claimant returned to full time employment of the same or similar nature following his injury?
15. Whether the hearing Commissioner erred in finding as a fact, and/or concluding as a matter of law, that given the accommodations made by the Claimant's family farm in order to permit him to perform limited services, his employment with Delano R. Kneece & Son is not evidence that a stable job market exists for the services the Claimant provides the error being that such findings are against the greater weight of the evidence in the record, and contrary to South Carolina law?
16. Whether the hearing Commissioner erred in finding as a fact, and/or concluding as a matter of law, that all wages paid to the Claimant by his current employer, Delano R. Kneece & Son, were actually not paid in the form of wages for any services rendered on behalf of the employer, but in fact constituted a gift, the error being that such a finding is against the greater weight of the evidence in the record, and contrary to South Carolina law where the Claimant's wages were paid and taxed as actual earnings, he is an owner

of Delano R. Kneece & Son Farms, and Claimant has consistently reported his earnings to State and Federal taxing authorities?

17. Whether the hearing Commissioner erred in finding as a fact, and/or concluding as a matter of law, that the Claimant is permanently totally disabled as a result of his 1999 injuries sustained with another employer, Kneece Farms, the error being that such findings are against the greater weight of the evidence in the record, and contrary to South Carolina law where the Claimant has returned to working the same or similar duties and schedule with another employer, and has consistently enjoyed increased earnings subsequent to his injury?
18. Whether the hearing Commissioner erred in finding as a fact, and/or concluding as a matter of law, that the Claimant is entitled to life time benefits due to permanent and total disability with a physical brain injury pursuant to §42-9-10, the error being that such findings are against the greater weight of the evidence in the record, and contrary to South Carolina law where the Claimant is a self-employed owner of his own business whose earnings have continually increased since returning to work with another employer and Claimant failed to meet his burden of proof to establish loss of earning capacity per §42-9-10?
19. Whether the hearing Commissioner erred in finding as a fact, and/or concluding as a matter of law, that the Claimant's employment is benevolent or sheltered in nature and, therefore, he is permanently totally disabled with a physical brain injury pursuant to §42-9-10, the error being that such findings are against the greater weight of the evidence in the record, and contrary to South Carolina law where the Claimant has ongoing employment with a subsequent employer, in a business which he owns, making higher wages, and South Carolina has not adopted the doctrine of sheltered or benevolent employment?
20. Whether the hearing Commissioner erred in finding as a fact, and/or concluding as a matter of law that the doctrine of benevolent or sheltered employment should be applied

in this case to support a finding of permanent and total disability, the error being that benevolent employment has never been recognized in South Carolina prior to this case?

21. Whether the hearing Commissioner erred in finding as a fact, and/or concluding as a matter of law that the doctrine of sheltered or benevolent employment should be applied in this case, the error being that the hearing Commissioner's ruling on this issue makes self employment tantamount to benevolent employment in that the Claimant could essentially provide benevolent employment to himself?
22. Whether the hearing Commissioner erred in finding as a fact, and/or concluding as a matter of law, that the "Defendants are ordered to pay for those medications for which the Defendants are responsible to pay including medication for all causally related injuries[.]" and specifically Drs. Wicker, Shissias, Uginio and White, the error being that such findings are against the greater weight of the evidence in the record, and contrary to South Carolina law where the Claimant did not previously make a specific request for authorization or reimbursement for such medications or treatment, and instead sought unauthorized treatment without the knowledge of Defendants, precluding the Defendants' right to direct treatment as provided by the S.C. Workers' Compensation Act?
23. Whether the hearing Commissioner erred in finding as an issue of fact, and/or concluding as a matter of law, that the Claimant is entitled to mileage reimbursement for 3,658 miles, the error being that such findings are against the greater weight of the evidence in the record, and contrary to South Carolina law where: (a) such mileage includes trips to the doctor's office or pharmacy for unauthorized medical visits or treatment, including treatment not causally related to the Claimant's compensable injuries, or for any reason prior to August 23, 2004; (b) the Claimant's failure to request such mileage benefits over the past 10 years which prejudiced the employer/carrier's ability to properly assess and evaluate these requests and gave rise to a *Laches* defense; (c) the Claimant failed to request authorization or evaluation from for the Defendants for treatment/prescriptions and diagnostics he sought – thus prejudicing the Defendants'/Appellants' opportunity to assess and evaluate these claims; and (d) the Claimant failed to submit properly itemized reimbursement requests to Defendants?

24. Whether the hearing Commissioner erred in finding as a fact, and/or concluding as a matter of law, that the Claimant is entitled to in excess of \$14,000.00 in reimbursement, to the degree that such reimbursement includes: (a) medication for unauthorized and unrequested medical visits or treatment; (b) medication for treatment or medication not causally related to these injuries; (c) is affected by the Claimant's own *laches* in failing to timely request such medical reimbursements over the past 10 years and has thereby removed the ability of the employer/carrier to properly assess and evaluate these requests; (d) when the Claimant sought treatment/prescriptions and diagnostics of his own accord for conditions or symptoms that were not previously accepted, but also for which he never requested treatment or evaluation from the Defendants – thus precluding the Defendants'/Appellants' from an opportunity to assess and evaluate these claims previously, the error being that such a finding is against the greater weight of the evidence in the record, and contrary to South Carolina law?
25. Whether the Claimant should be barred from reimbursement for all prescription medication not requested up to the date of the prior hearing before the Commission, January 11, 2005 based on the doctrines of *res judicata*, collateral estoppel and/or law of the case, in that the Claimant failed to raise this issue at the prior hearing before the Commission.
26. Whether the hearing Commissioner erred in finding as a fact, and/or concluding as a matter of law, that the Claimant is permanently totally disabled with a physical brain injury pursuant to S.C. Code Ann. §42-9-10, the error being that such a conclusion is against the greater weight of the evidence in the record, and contrary to South Carolina law?
27. Whether the hearing Commissioner erred in finding as a fact, and/or concluding as a matter of law, that the Claimant (based on permanent total disability, accompanied with a physical brain injury) is entitled to life time indemnity benefits from the date of his accident in November of 1999 onwards, the error being that such a conclusion is against the greater weight of the evidence in the record, and contrary to South Carolina law

where: (a) the Claimant has returned to work in the interim; (b) the Claimant executed a Form 17 in 2005; (c) this finding is inconsistent with the Commission's prior order issued on April 18, 2005; and (d) such lifetime indemnity benefits are presumptively for permanent indemnity and should not be available prior to attainment of maximum medical improvement?

28. Whether the hearing Commissioner erred in finding as a fact, and/or concluding as a matter of law, that the Claimant was permanently totally disabled pursuant to the reasoning of *Eaddy v. Smurfit-Stone Container Corp.*, 355 S.C. 154, 584 S.E.2d 390 (Ct. App. 2003), the error being that such a conclusion is against the greater weight of the evidence in the record, and contrary to South Carolina law where the Claimant has returned to work with a subsequent employer, of which he is partial owner, and has worked for years at consistently higher earnings than prior to his injury?
29. Whether the hearing Commissioner erred as a matter of law, in applying the cases of *Stephenson v. Rice Services, Inc.* 323 S.C. 113, 473 S.E. 2d 699 (1996); *McCollum v. Singer Co.*, 300 S.C. 103, 386 S.E.2d 471(Ct. App. 1989); *Lyles v. Quantum Chemical Company* 315 S.C. 440, 434 S.E. 2d 292 (Ct. App. 1993); *Wigfall v. Tideland Utilities, Inc.* 354 S.C. 100, 580 S.E. 2d 100 (2003) to make a conclusion that the Claimant is permanently totally disabled, the error being that such conclusions are against the greater weight of the evidence and/or contrary to and not supported by existing South Carolina law where the Claimant has signed a Form 17, has admitted returning to gainful employment in excess of 40 hours per week at a business in which he is self-employed, and is making a higher salary than prior to the injury?
30. Whether the hearing Commissioner erred in finding as a fact, and/or concluding as a matter of law, that the Claimant was permanently totally disabled under S.C. Code Ann. §42-9-10(C) entitling him to life time medical and indemnity benefits on that basis, the error being that such a conclusion is against the greater weight of the evidence and/or contrary to and not supported by existing South Carolina law?

31. Whether the hearing Commissioner erred in finding and concluding that Defendants are responsible for payment of past medical treatment provided by Dr. Shissias, Dr. Wicker, Dr. White, and Dr. Ugino and that Defendants are responsible for future medical care to be provided by Dr. Shissias, Dr. Wicker and Dr. Ugino, the error being that treatment provided by these physicians was without the knowledge or authorization of Defendants and in violation of the Defendants rights to direct medical treatment and to provide treatment for Claimant's causally related injuries pursuant to §42-15-60 and further that there is insufficient evidence to establish the need for such future medical treatment?
32. Whether the hearing Commissioner erred in finding as an issue of fact, and/or concluding as a matter of law, that the Defendants were responsible for all medical bills and prescriptions, as well as, mileages, submitted in the Claimant's Exb's. No's. 1 and 2, the error being that such conclusions are against the greater weight of the evidence in the record, and contrary to South Carolina law for the same reasons outlined herein above?
33. Whether the hearing Commissioner erred in finding as a fact, and/or concluding as a matter of law, that:

Because the Claimant is totally and permanently disabled with physical brain damage as set out in S.C. Code Ann. §42-9-10 (C) he is entitled to payment of weekly compensation from the date of this November 22, 1999 accident. The Claimant has been paid 157 1/7 weeks of weekly compensation. The Defendants shall pay the Claimant for the remaining weeks of weekly compensation through the date of this order. The Defendants shall continue making weekly compensation to the Claimant in the amount of \$461.67 per week for his lifetime.

the error being that such conclusions are against the greater weight of the evidence and/or contrary to and not supported by existing South Carolina law where such a finding awards the Claimant permanent indemnity benefits, (a) prior to his attainment of maximum medical improvement; (b) during a period in which the Claimant signed a Form 17 and returned back to full time work as a self-employed farmer at consistently higher earnings; (c) awards him permanent indemnity benefits while he was still actively treating and making medical progress; and (d) this finding is inconsistent with the

Commission's prior order dated April 18, 2005 finding that the Claimant returned to work as owner and operator by April 12, 2004?

34. Whether the hearing Commissioner erred in finding as a fact, and/or concluding as a matter of law, that "[t]he Claimant has benefited from the treatment of Dr. Lawrence H. Bergmann, Dr. Roger Deal, Dr. Charles Shissias, Dr. Christopher Wicker and Dr. Michael R. Ugino and pursuant to §42-9-10 (C) Claimant is entitled to continuing treatment by these physicians...for life. §42-9-10 (C)," the error being that such conclusions are against the greater weight of the evidence and/or contrary to South Carolina law where: (a) such treatment was not causally related to the Claimant's compensable injuries arising from his November 22, 1999 accident; (b) the proper standard is not whether a Claimant benefits from the treatment provided, but whether it is for treatment of symptoms and injuries that are causally related to the work injury(s); (c) the Claimant sought treatment with unauthorized physicians without Defendants knowledge, thereby prejudicing the Defendants right to direct medical treatment under §42-15-60; and (d) there was insufficient evidence to establish the necessity for future medical treatment by some doctors?
35. Whether the hearing Commissioner erred in failing to award a credit for temporary indemnity benefits paid or awarded for all weeks of wages earned by the Claimant from his date of return to work until the date he was determined permanently totally disabled and/or reached maximum medical improvement pursuant to the evidence in the record and §42-9-210, §42-15-60 and South Carolina Law?
36. Whether the hearing Commissioner erred in failing to find that Claimant had reached maximum medical improvement before making an award for permanent disability, and/or a finding as to his date of attainment of maximum medical improvement?
37. Whether the hearing Commissioner erred in failing to award credit against permanent indemnity benefits awarded for all wages earned by the Claimant subsequent to reaching maximum medical improvement pursuant to the evidence in the record and §42-9-210, §42-15-60 and South Carolina Law?

38. Whether the hearing Commissioner erred in considering evidence that a reasonably stable market does not exist for the services Claimant provides for the family farm, the error being that such evidence is irrelevant where the Claimant is a self-employed owner of the farming operation and is entitled to earnings/profits of the farming operation and no evidence was offered that the Claimant has sought or will need to seek other employment?
39. Whether the hearing Commissioner erred in considering the opinions of Dr. Bill Stuart in connection with the determination of total disability, the error being that Dr. Stuart's opinions were conditioned on the concept of benevolent employment which is not consistent with the law in South Carolina?

Respectfully Submitted,



---

Mark D. Cauthen, Esquire  
Peter P. Leventis, Esquire  
McKay, Cauthen, Settana & Stublely, PA  
Post Office Box 7217  
Columbia, South Carolina 29202-7217  
(803) 256-4645  
Attorneys for the Employer/Carrier

May 12, 2011