

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission
Appellate Panel

173332

Trial Court Case No. 1306305

Clarence Winfrey, Appellant,

v.

Archway Services, Inc., Employer,
and American Fire & Casualty Insurance
Company, Carrier, Defendants/Respondents.

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AUG 25 2014

SC Court of Appeals

NOTICE OF APPEAL

Appellant Clarence Winfrey appeals the Decision of the Appellate Panel of the South Carolina Workers' Compensation Commission filed July 25, 2014. Appellant received notice of entry of the Appellate Panel Order (the final Agency Decision which is attached) according to an unsigned "Affidavit of Service" by email on July 25, 2014.

Pursuant to SC Code §42-17-60, the grounds of the appeal and/or the errors of law presented to the Court are set out hereinafter:

1. That the Full Commission erred as a matter of law by permanently denying the Claimant benefits for the head and brain where the issues before the Hearing Commissioner were whether the

Claimant had sustained compensable injury by accident and whether he was entitled to reinstatement of weekly compensation benefits and to medical benefits for all causally related injuries and conditions stemming from the accident.

2. That where there was no request for an Award for permanent loss of earning capacity, SC Code §42-9-10 and 20, and/or permanent loss of or loss of use of the head or brain under SC Code §42-9-30 and no request for medical care for the head or brain under SC Code §42-15-60, the Full Commission erred as a matter of law by denying the Claimant permanently the right to request any medical benefits or compensation benefits.

3. That the Full Commission erred as a matter of law by permanently denying the Claimant medical and/or compensation benefits for injury to the brain and/or head wherein the Hearing Commissioner in accordance with law found that the Claimant at the time of hearing was not at maximum medical improvement, was seeking benefits for injury to the heart due to the electrocution injury and at the time of hearing there was no evidence of injury to the head or brain, and wherein she found that "if any problems are opined to have stemmed from the electrical shock injury which is outside of the area of expertise of Dr. Lide and Dr. Travis, those doctors may request referral for him for evaluation and treatment but the Defendants retain the right to contest whether those are related to the accident and to select the physician for treatment for any causally related problems."

4. That the Full Commission erred as a matter of law by

allowing Counsel for the Defendants to draft a proposed Order and by not fulfilling its statutory duty under the Administrative Procedures Act and the Workers' Compensation Act by failing to make its own detailed Findings of Fact and Conclusions of Law.

5. That where the Full Commission's decision was to "affirm in part and reverse in part the Decision and Order of the Single Commissioner" and its only instruction as to the reversal was:

"The Panel denies the brain injury based in insufficient evidence."

The Commission erred as a matter of law by issuing an Order written by Defense Counsel that deleted and/or substantially modified unrelated but substantial findings of fact and conclusions of law made by the Hearing Commissioner specifically including but not limited to deleted Findings such as Hearing Commissioner Finding #16:

"For purposes of the hearing before the undersigned, Claimant is very credible! I base this finding on my observations of Claimant's demeanor and on the delivery of his testimony."

and substantially modified Finding such as Hearing Commissioner Finding #15 (see Full Commission #29):

"(Deleted) While the head and brain are listed as bodily parts under #3 in the Pre-hearing Brief that this is a systemic electrical shock and requests treatment for, "all organs, members and bodily parts determined to be related.") I note from the testimony and records of Dr. Greenfield that the Claimant had tenderness in the left arm and shoulder and was diagnosed with muscle shock. In her deposition she stated that this tenderness found on examination is more indicative of actual injury to those areas than just the pain that is

caused by a heart attack. Dr. Lide in his treatment notes and specifically on September 17, 2013, recorded that, 'we tried this patient on Neurontin last month when he appears to have peripheral neuropathy secondary to electrocution at work. Dr. Lide also recorded on the August 13th visit that he was having numbness in his great toe and suggested this neurological symptom was due to the electrical shock he experienced rather than the myocardial infarction. Thus, if any problems are opined to have stemmed from the electrical shock injury which is outside of the area and expertise of Dr. Lide and Dr. Travis, those doctors may request referral for him to other physicians for evaluation and treatment but the Defendants retain the right to contest whether those are related to the accident and to select the physicians for treatment for any causally related problems."

and substantially modified Hearing Commissioner Finding of Fact #19:

"Claimant to receive temporary total disability benefits from September 15, 2013 through the present and continuing...."

Full Commission Finding of Fact #32 modified to:

"Due to the compensable injury to his heart,
claimant shall receive temporary"

and added Findings outside of the request for proposed Order Full Commission such as Finding of Fact #27:

"We decline to leave the claim open for possibly unlimited future hearings to determine compensability of presently alleged body parts as it would be grossly prejudicial to Defendants."

6. That the Full Commission erred as a matter of law by issuing an Order far exceeding its only specific holding that, "The Panel denies the brain injury based in insufficient evidence" and by making and including Conclusions of Law #2, #3, #4, #5, #6, #7, #8, #9, #10, #11, #12, #13, and especially where

the Order part of the Decision affirms all Findings of Fact and Conclusions of Law of the Hearing Commissioner except as to the Findings on the, "head and/or brain".

7. That where the Full Commission Panel instructions stated that "the Panel denies the brain injury", the Commission erred as a matter of law and in violation of due process rights of the Appellant to notice and an opportunity to be heard by signing an Order denying the, "Claimant's head and/or brain injury."

8. That the Full Commission erred as a matter of law by not applying the basic fundamental principles of the Act and by applying established law that provides that a claimant may withdraw a request at any time prior to or at hearing.

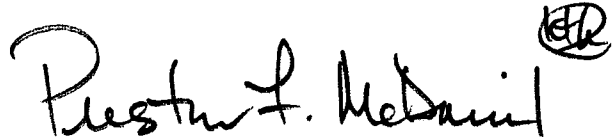
9. That the Full Commission, in what was termed as a decision reversing the Hearing Commissioner's decision on brain injury, erred as a matter of law by making Findings of Fact #14, #15, #16, #17, #18, #19, #20, #21, #22, #23, #24, #25, #26, #27, and #28.

10. That based on the Statement of the Case as set out in the Full Commission Order, the Commission Decision denying the Claimant the right to ever seek any benefits for brain injury should be reversed for numerous reasons as a matter of law specifically including but not limited to, the Panel considered information outside of the evidence in the Record; considered information not relevant or material that was prejudicial to the Claimant; misstatements of the Record; statements about off the

Record conferences; reference to post-hearing matters not part of the Record before the Full Commission for review and thus outside of the Record.

11. That where the Full Commission's only specific Finding it made following the Appeal Hearing was, "The Panel denies the brain injury based in insufficient evidence", the Full Commission erred as a matter of law by issuing an Order, ordering that a request for benefits for the brain and/or head were forever barred.

Respectfully submitted,



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Attorney for Appellant

August 22, 2014

Other Counsel of Record:

Brett H. Bayne, Esquire
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803-779-2300
Attorney for Respondents

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Trial Court Case No. 1306305

Clarence Winfrey, Appellant,


v.

Archway Services, Inc., Employer,
and American Fire & Casualty Insurance
Company, Carrier, Respondents.

PROOF OF SERVICE

I certify that I have served the **NOTICE OF APPEAL** by depositing a copy of it in the United States Mail, postage prepaid, on August 22, 2014 addressed to: Ms. Amy Bracy, South Carolina Workers' Compensation Commission, Post Office Box 1715, Columbia, South Carolina 29202 **AND** also serving a copy upon Brett H. Bayne, Esquire, McAngus, Goudelock & Courie, Post Office Box 12519, Columbia, SC 29211.

Dated: August 22, 2014

Preston F. McDaniel 

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Attorney for Appellant

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Proudly representing injured workers
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August 22, 2014

Honorable Jenny Abbott Kitchings
Clerk of Court
SC Court of Appeals
1015 Sumter Street
Post Office Box 11629
Columbia, South Carolina 29211

**RE: Clarence Winfrey, Appellant, v. Archway Services,
Inc., Employer, and American Fire & Casualty
Insurance Co., Carrier, Respondents.
Trial Court Case No. 1306305**

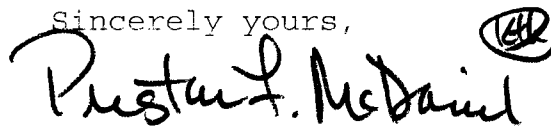
Dear Ms. Kitchings:

Enclosed for filing is a Notice of Appeal in the above-referenced matter. Also, enclosed are the following:

1. Proof of Service of the Notice of Appeal on the Respondents;
2. A copy of the Order which is to be challenged on appeal; and
3. Our Filing fee in the amount of \$100.00.

Please file the original documents and return the clocked-in copies to me via the enclosed self-addressed, stamped envelope. By copy of this letter, I am serving Counsel of Record and the SC Workers' Compensation Commission with the above-referenced Proof of Service and Notice of Appeal.

Sincerely yours,



Preston F. McDaniel

PFM/kth
Enclosures

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cc: Brett H. Bayne, Esquire
Ms. Amy Bracy, SC Workers' Compensation Commission

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