

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM SOUTH CAROLINA
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
APPELLATE PANEL

T. Scott Beck, Commissioner for the Appellate Panel;
Andrea C. Roche, Commissioner, and Avery B. Wilkerson, Jr., Commissioner,
concurring

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SEP 16 2014

SC Court of Appeals

WCC File No.: 1108188

Appellate Case No.: 2014-001676

Russell Goodwin, (Employee/Claimant),Appellant,

v.

Employbridge d/b/a Prologistix (Employer) and
American Casualty Company of Reading PA (Carrier), Respondents.

**RESPONDENTS' RETURN TO APPELLANT'S MOTION TO FILE OUT OF
TIME**

Pursuant to Rule 203(b)(6), SCACR, a party has thirty (30) days to file a Notice of Appeal from an administrative tribunal. In this case, Appellant seeks to file a Notice of Appeal of the May 20, 2014 Order of the Full Appellate Panel of the South Carolina Workers' Compensation Commission. Appellant contends he received written notice of Order on May 25, 2014, but he did not file a Notice of Appeal until July 29, 2014. Since Appellant filed his Notice of Appeal over one month past the 30 day deadline set forth in Rule 203(b)(6), Respondents respectfully request that this Court dismiss the appeal.

In his motion, Appellant argues that a tolling of the thirty (30) day time period for filing a Notice of Appeal may be warranted upon showing that Appellant was *non compos mentis*. Appellant cites a United States Court of Appeals, District of Columbia Circuit case to define *non compos mentis* as “incapable of handling her own affairs or unable to function in society” and “unable to engage in rational thought and deliberate decision making sufficient to pursue her claim alone or through counsel.” Smith-Haynie v. District of Columbia and Addison Davis, 155 F.3d 575 (D.C. Cir. 1998).

In this case, Appellant appeared *pro se* at both his June 12, 2013 hearing before the Single Commissioner and his February 18, 2014 hearing before the Workers Compensation Commission Full Appellate Panel. At his first hearing, Commissioner Taylor discussed the Appellant’s right to counsel in the pre-hearing conference and at the outset of the hearing on the record. Appellant was advised of his rights to seek legal counsel, and he chose to proceed *pro se*. Appellant did not retain his current counsel until July 29, 2014, the date his Notice of Appeal was filed. Clearly, Appellant has been able pursue his claim through a Workers Compensation Commission hearing and appeal on his own, and he refused offers to postpone his case in order to allow him time to seek representation.

Appellant’s counsel alleges the deadline for filing his Notice of Appeal should be tolled based on Appellant’s disability that arises from mental illness. In support of his argument, Appellant submitted medical records from the South Carolina Department of Mental Health dated June 14, 2011, June 22, 2011, and April 4-5, 2013. The records submitted with Appellant’s Motion indicate that Appellant suffers from (1) Major Depressive Disorder, (2) Cannabis abuse, (3) caffeine induced sleep disorder, and (4)

caffeine induced Anxiety Disorder, but the records do not support Appellant's argument that he was unable to handle his own affairs or function in society.

Based on the fact that no records exist to show Appellant was incapable of handling his own affairs or functioning in society, and the fact that Appellant was able to pursue his works compensation claim on his own through a hearing and Full Commission appeal, Respondents assert that Appellant has been able to engage in rational thought and deliberate decision making sufficient for him to pursue his claim, and the Court should therefore deny his current motion to file out of time.



J. Gabriel Coggiola, Esquire
Justin T. Williams, Esquire
Willson, Jones, Carter & Baxley, P.A.
4500 Fort Jackson Boulevard
Columbia, South Carolina 29209
(803) 227-2889
Attorneys for Respondents

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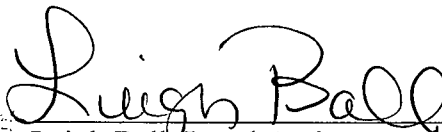
Appellate Case No.: 2014-001676

Russell Goodwin, (Employee/Claimant),Appellant,
v.
Employbridge d/b/a Prologistix (Employer) and
American Casualty Company of Reading PA (Carrier),Respondents.

PROOF OF SERVICE

The undersigned hereby certifies that on the date indicated below, she served Counsel for Appellant with a copy of **Respondents' Return to Motion to File Out of Time** by mailing a copy of the same by United States Mail with first class postage prepaid to the following address:

T. Jeff Goodwyn
Goodwyn Law Firm, LLC
2519 Devine Street, Suite A
Columbia, South Carolina 29205
Attorney for Appellant



Leigh Ball, Legal Assistant to J. Gabriel Coggiola, Esquire

September 12, 2014
Columbia, South Carolina

WILLSON JONES CARTER & BAXLEY, P.A.

ATTORNEYS AT LAW

GREENVILLE CHARLESTON COLUMBIA CHARLOTTE RALEIGH ATLANTA

John Gabriel Coggiola
Direct (803) 227-2889
Fax (803) 782-2527
jgcoggiola@wjlaw.net

4500 Fort Jackson Boulevard
Columbia, SC 29209
www.wjclaw.net

September 12, 2014

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

Re: Russell Goodwin vs Employbridge dba Pro Drivers
Appellate Case No.: 2014-001676
WCC File No.: 1108188 DOI: 7/5/2011
Carrier: American Casualty Company of Reading PA - Claim No.: 001196006729WC01
WJC&B File No.: 0090.01185

Dear Ms. Kitchings:

Pursuant to Rule 240(e), please find enclosed an original and six (6) copies of **Respondents' Return to Appellant's Motion to File Out of Time**, and Proof of Service for the same. By copy of this letter, I am serving the same upon T. Jeff Goodwyn, attorney for Appellant.

I appreciate your attention on this matter. If you have any questions or concerns, please do not hesitate to contact me.

With kindest regards,

WILLSON JONES CARTER & BAXLEY, P.A.



John Gabriel Coggiola

JGC/jgc
Enclosure(s)

cc: Ms. Adrian Bryant (via email)
T. Jeff Goodwyn, Jr., Esquire

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