

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA  
WORKERS' COMPENSATION COMMISSION

Trial Court Case No. 1204039

William Lee Turner, Employee, ..... Appellant,

v.

SAIIA Construction, Employer, and  
Old Republic General Insurance  
Corporation c/o Gallagher Bassett  
Services, Inc., Carrier, ..... Respondents.

NOTICE OF APPEAL

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NOV 10 2014

**SC Court of Appeals**

74104

Appellant William Lee Turner appeals the Decision and Order of the Hearing Commissioner filed April 14, 2014 and the Decision and Order of the South Carolina Workers' Compensation Commission Appellate Panel filed on October 10, 2014. Appellant received notice of entry of the Appellate Panel Order via electronic mail only on October 10, 2014. Appellant did not receive notice or a copy of the Order pursuant to SC Code §42-17-60 and/or §1-23-350.

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 pursuant to S.C. Code of Laws §42-17-40, the

Claimant/Appellant requested that the Full Commission review of all of the Findings of Fact, the Conclusions of Law, the Order and Award and of all rulings and decisions made by the Commissioner at the hearing, as contained in the Record or as made at any unrecorded pre-hearing conference, and in any communications concerning the claim, Order, Award and Decision rendered by the Hearing Commissioner in this matter. Based on the Order issued, the Full Commission erred in that review and Appellant requests a review pursuant to SC Code §1-23-380(4).

2. That the Commission erred as a Matter of Law by failing to apply the unexplained injury and death presumption to this claim.

3. That where the Hearing Commissioner made specific Findings of Fact: that the Claimant/Appellant had absolutely no memory of the day before, the day of or any of the events surrounding the alleged accident nor of the day after the alleged accident (Findings of Fact number 9); and that, "The alleged accident was unwitnessed" (Findings of Fact number 10 and number 11), the Commission erred as a matter of law by failing to apply the unexplained injury or death presumption as established by our Appellant Courts and as applied in the Circuit Court that:

"There is a natural presumption, or presumption of fact, that one charged with the performance of a duty and injured while performing such duty, or found injured at a place where his duty may have required him to be, is injured in the course of, and as a consequence of, the employment." Owens v. Ocean Forest Club, 196 S.C., 12 S.E.2d, 839

(1941). Jake v. Jones, 240 S.C. 574, 126 S.E.2d, 721 (1962).

The Commission had specifically been ordered to apply this presumption previously in an undisputed, factual evidence case involving an unwitnessed fall in the case of Daniel Windham v. Sears Roebuck and Company, Docket No. 2007-CP-21-1391, Order of the Honorable Thomas A. Russo, dated February 20, 2008. When the Commission failed to apply the presumption on Remand, the Circuit Court then applied the presumption to the undisputed facts in its subsequent Order in the matter of Daniel C. Windham v. Sears Roebuck and Company, Docket No. 2009-CP-21-1001, Order of the Honorable Thomas A. Russo, April 6, 2010 holding:

"Therefore it is Ordered, based on the undisputed facts in this case that Mr. Windham is entitled to the application of the presumption established by the Supreme Court in unwitnessed injury or death situations and applying that presumption to the undisputed facts, Mr. Windham is determined to have sustained injury by accident arising out of in the course of his employment as a Matter of Law and is awarded benefits pursuant to the Workers' Compensation Act. This matter shall be remanded to the Commission for the entry of benefits and for determination of the benefits to which Mr. Windham is entitled for both medical care and compensatory compensation for his injuries sustained.

AND IT IS SO ORDERED."

This is a legal error because the Commission is duty bound to apply the law as dictated by a higher Court until it is changed.

4. That the Commission erred as a matter of law by basing its Decision on conjecture, speculation and innuendo wherein the undisputed facts in evidence, in addition to the undisputed factual findings that the accident was unwitnessed and that the

Claimant/Appellant had absolutely no memory of the accident, came from the Claimant/Appellant's co-worker Mr. Paul Barnette and establishes as uncontested/undisputed facts that the Claimant/Appellant did not complain of any headaches, he was not complaining of any dizziness nor had he complained of any ill feeling at all and had no complaints of even feeling unusual in any way on the day of the accident. His testimony specifically was:

"Q: So would it be fair to say that at all times from seven o'clock that morning until he moved the truck at whatever time it was - - -

A: Between 2:30 and somewhere. I know our time is on our deposition.

Q: And he had no complaints of headache?

A: No.

Q: No complaints of dizziness?

A: No.

Q: No complaints of feeling ill?

A: No.

Q: Any complaints of feeling unusual?

A: Not that day. I thought Lee, I - - you know, in the back of my mind, I thought, you know, Lee was back to one hundred percent. I thought Lee was doing 'A Number One' that day."

Deposition Transcript of Paul Barnette, p. 18, ll. 10-25. (Emphasis added).

Considering this and all of the undisputed facts on the day of the accident, the Commission's Decision to the contrary is not

based on substantial evidence and is the subject of conjecture, speculation and innuendo.

5. That the Commission erred as a matter of law in its Order affirming the Hearing Commissioner's and specifically under the Findings of Fact and Conclusions of Law made by failing to apply a fundamental construction principle of the Act which is that:

"Workers Compensation Laws constitute a form of social legislation and were enacted primarily for the benefit, protection and welfare of working men and their dependents to relieve them of uncertainties of trial and suit for damages, to cast on industry in which they are employed a share of the burden resulting from industrial accidents and to prevent burden of injured employees and their dependents becoming charges on society. Their right to sue and obtain compensation is taken away and such laws should be construed liberally in favor of the employees and their dependents, in furtherance of beneficent purposes for which they were enacted, and to avoid any incongruous or harsh results."

6. That the Commissioner err as a matter of law by making Findings of Fact which are the subject of conjecture, speculation and innuendo and by applying those Findings in an arbitrary and capricious manner to establish a factual basis that does not exist in the Record to deny this Claimant/Appellant benefits; specifically including Findings of Fact 3, 12, 13, 14, 15, 17, 19, 20, 21, 24, 25.

7. That the Commission erred as a matter of law by characterizing the contentions of the parties and dispute between the parties in Finding of Fact number 19 in an unwitnessed injury

or accident presumption case in an erroneous manner by framing the dispute as follows:

"There is no dispute that Claimant injured his head in the fall, but the dispute is whether the Claimant fell from a standing position or from the steps of the cab."

This is an incorrect statement of the position of the parties, the facts of the case and the undisputed findings that the Commission made that this was an unwitnessed case in which the Claimant/Appellant has no memory of what occurred.

8. That the Commission erred as a matter of law after specifically making Findings of Fact 4, 5, 6, 9, 10 and 11, by failing to apply under Conclusions of Law 9 and 10 the unexplained injury or death presumption and by trying to "factually" distinguish a legal presumption under Conclusion of Law number 10.

9. That the Commission erred as a matter of law in affirming Finding of Fact 16 that:

"If Barrette had seen Claimant on the steps of the cab just prior to the alleged accident, then the result in this case might be vastly different . . ."

This indicates that the Commissioner's Decision is biased and based on speculation, innuendo and on a set of assumed facts not in evidence and therefore outside of the evidence in the Record. It also adds an additional element to the burden of proof.

10. That the Commission erred as a matter of law by failing to apply the concept of circumstantial evidence to the facts of this case.

11. That the Commission erred by applying in fact the wrong burden of proof.

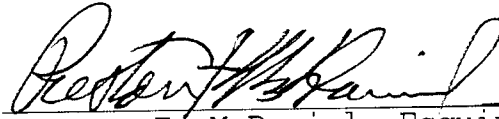
12. That where the Full Commission's only Decision issued on the appeal was, "The Commissioners considered the matter and find a **FULL AFFIRMATION** of the Single Commissioner's Decision and Order", the Full Commission erred by issuing an Order drafted by Defense Counsel that added Conclusions of Law that there is no indication in the Record were made by the Commission.

13. That the Full Commission erred as a matter of law in violation of the Administrative Procedures Act, the Workers' Compensation Act and its own Regulations by failing to make detailed Conclusions of Law on the issues presented to it for review.

14. That the Full Commission erred as a matter of law by failing to properly apply the law to the facts of the case.

The above-referenced Exceptions are subject to amendment upon receipt of the Full Commission Transcript.

Respectfully submitted,



Preston F. McDaniel, Esquire  
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Attorney for Claimant/Appellant

November 6, 2014

Other Counsel of Record:

Jason W. Lockhart, Esquire  
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Columbia, South Carolina 29211  
803-779-2300

Attorney for Respondents

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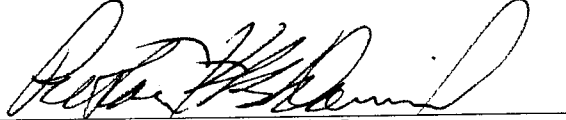
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PROOF OF SERVICE

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I certify that I have served the **NOTICE OF APPEAL** by depositing a copy of it in the United States Mail, postage prepaid, on November 7, 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 Jason W. Lockhart, Esquire, McAngus, Goudelock & Courie, Post Office Box 12519, Columbia, SC 29211.

Dated: November 7, 2014

  
Preston F. McDaniel  
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Attorney for Appellant

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Proudly representing injured workers  
for over 30 years.

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November 7, 2014

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

**RE: William Lee Turner, Appellant, v. SAIIA Construction,  
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Carrier, Respondents.  
Trial Court Case No. 1204039**

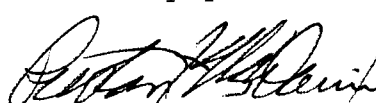
Dear Ms. Kitchings:

Enclosed for filing is the original and one (1) copy of 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 Orders which are 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  
copy 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

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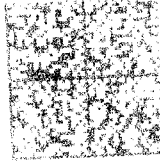
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PFM/kth  
Enclosures

**SC Court of Appeals**

cc: Jason W. Lockhart, Esquire  
Ms. Amy Bracy, SC Workers' Compensation Commission

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