

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM South Carolina
Workers Compensation Commission

Full Commission Order Dated December 19, 2013 Affirming Commissioner Melody L. James
orders dated January 04, 2013 And September 30, 2013

Case No.: 2014-000186

John C. McDaniel.....Appellant,

v.

Snelling Staffing Services and United Wisconsin Insurance
Company c/o United HeartlandRespondents.

**RESPONSE TO MOTION TO
CORRECT AND/OR AMEND THE RECORD ON APPEAL**

PLEASE TAKE NOTICE that the Appellant hereby replies to Respondents' Motion to Correct
and/or Amend the Records on Appeal as follows:

1. It is true that certain pages have handwritten notes on them. There was a multitude of records that were submitted to the Worker's Compensation commission with handwritten notes on them. I've attached copies of pages 143, 251, 252, 255.
 - a. Page 143 although this copy was included in error and the appellant has been to locate since the service of his record on appeal and unadulterated copy. At the time the appellant served the record on appeal this is the only copy he could find. I have attached that to this response for clarification. Although the handwritten notes state "this is a lie" this is not matter that was not presented to the commission as the appellant repeatedly informed the commission the subpoenas

had not been complied with even though the defendants/respondents stated they had supplied all documents requested. At two different hearings the appellant stated this was untrue. However, evidence exists that the motion to quash subpoenas was granted by the Worker's Compensation commission on October 14, 2013 was not actually filed until October 15, 2013. The writing on this copy, was written in haste so I could try to respond to this motion as it is not been properly served on the appellant prior to the hearing. The commission clearly ruled on a motion that had yet to be filed or answered. This is not a new argument nor new matter being presented.

b. As to pages 252 253 255 I have also attached these pages as I guess the respondents would like to place the burden of me reprinting entire record on appeal for brackets. The appellant does not believe the brackets constitute handwritten notes, nor the brackets constitute new matter being presented. However if the court chooses I will go through with whiteout and blank all of the brackets that I can find in the record on appeal.

As to any further "hand-written notes", the appellant believes that the respondent's argument is incomplete as they motion generally for the appellant to identify and correct errors which they have failed to identify. The Appellant believes general averments are insufficient to warrant action by the court.

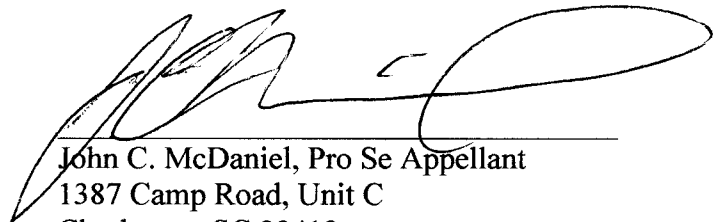
2. After review it appears pages 7 and 30 are missing from the transcript. The appellant will gladly add those as appropriate attachments i.e. (ROA 263-a) for page 30.
3. The transcript of the deposition of Daniel J Cobb is in a condensed version however in the interest of justice the appellant respectfully asks to accept this, as is, to expedite the issue and reduce costs on the appellant. Although the respondent's attorneys appear baffled of how to reference four pages contained on one, it could easily be

referenced by citing the record on appeal page number, then the transcript page number, then the line. i.e., (ROA 263 (p.12, line 11-20))

4. The respondents state a multitude of records is absent from the record on appeal. This is absolutely unfounded. The records appear in the following places in the record on appeal.

- a. ROA 169
- b. ROA 209
- c. ROA 206
- d. Was omitted
- e. ROA 179-180
- f. As indexed ROA 785
- g. the appellant can add the attached email to the record on appeal
- h. the appellant can add the attached email to the record on appeal
- i. the appellant can add the attached email to the record on appeal

WHEREFORE, based on all of the above, the Appellant respectfully requests that the Respondents' Motion be denied or that the Appellant be given the opportunity to supplement both his Record on Appeal and his designation of matter.



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Dec. 15, 2014

11. Thereafter, on January 14, 2013, Claimant filed a Form 30, Request for Commission Review, citing numerous alleged errors of law.
12. Following his Form 30, the Claimant has filed numerous Motions and Requests for Requests for Admission of Supplemental APA submissions.
13. With the exception of Claimant Counsel's March 8, 2013 Motion Pursuant to Regulation 67-707 to Admit Additional and Newly Discovered Evidence, all of the Claimant's additional Motions have been denied by the Commission.
14. At Claimant's request, the Commission scheduled a Remand Hearing before Commissioner James on July 8, 2013 to consider the additional evidence admitted based on the Commission's April 15, 2013 Judicial Conference Decision and Order.
15. The only issue for the Remand Hearing was whether the additional evidence alters Commissioner James' January 4, 2013 Decision and Order.
16. Prior to the July 8, 2013 Remand Hearing, Defendants received 3 subpoenas from Claimant, requesting personal appearances by Angela Baldwin, Jim Pascutti, and Nicole Service at the July 8, 2013 Remand Hearing. Additionally, Claimant requested numerous documents which have already been provided to him, minus any privileged documents.
17. By Motion to Quash filed on July 2, 2013, Defendants requested the Claimant's subpoena, commanding the appearance of both the claims representative and two employer representatives, be quashed because it required attendance at a Remand Hearing where the only issue was the admittance of additional payroll records.
18. Prior to proceeding with the July 8, 2013, Commissioner James granted Defendants' July 2, 2013 Motion to Quash.

not only
issue of this hearing

This is a lie...

1 Q. ALL RIGHT. AND WHERE DID YOU FIRST WORK WHEN YOU
2 BEGAN WORKING FOR SNELLING?

3 A. BEN ARNOLD, WINE AND SPIRITS DISTRIBUTION.

4 Q. AND I THINK THOSE WAGES HAVE BEEN SUBMITTED TO THE
5 COMMISSIONER, BUT IT LOOKS LIKE WHEN YOU WORKED
6 THERE, YOU WERE MAKING 11.50 AN HOUR?

7 A. YES, SIR.

8 Q. AND IF WE GO THROUGH THOSE RECORDS AND WAGES, IT
9 LOOKS LIKE YOU WERE GIVEN A FAIR AMOUNT OF OVERTIME
10 WHILE WORKING AT BEN ARNOLD?

11 A. YES, SIR.

12 Q. AND WHAT WERE YOU DOING THERE; WHAT WAS YOUR JOB?

13 A. I WAS A ROUTE DRIVER. I WOULD DROP OFF, DELIVER,
14 AND SET UP CASES OF WINE OR CASES OF SPIRITS. EACH
15 BOX WEIGHED ABOUT [40 POUNDS, AND A TYPICAL DAY WOULD
16 BE BETWEEN TWO AND THREE HUNDRED BOXES.]

17 Q. AND WE'LL TALK ABOUT THAT JOB ENDING LATER, BUT THE
18 OTHER JOB YOU HAD THROUGH SNELLING WAS WORKING AT
19 ALSIDE REVERE, WHICH IS WHERE YOU GOT HURT?

20 A. YES, SIR.

21 Q. CAN YOU TELL US WHAT YOU WERE DOING THERE?

22 A. DELIVERY OF WHOLESALE BUILDING SUPPLIES. I WOULD
23 LOAD A TRUCK IN THE MORNING, HELP OUT AROUND THE
24 WAREHOUSE AND THEN TAKE THOSE SUPPLIES TO SITES AND
25 DROP THOSE SUPPLIES OFF AND COME BACK.

- 1 Q. AND THE LIFTING REQUIREMENTS OF THE ALSIDE REVERE
2 JOB?
- 3 A. BEING ABLE TO LIFT BY MYSELF BOXES 16 TO 18 FEET IN
4 LENGTH AND UP TO 75 POUNDS OR SO.
- 5 Q. AND THE JOBS THAT WE'VE JUST GONE THROUGH, ARE THOSE
6 ALL THE JOBS THAT YOU'VE DONE SINCE FINISHING HIGH
7 SCHOOL?
- 8 A. YES, SIR.
- 9 Q. AND UNDER THE CURRENT RESTRICTIONS THAT YOU'RE UNDER
10 FROM DR. OLSEN, COULD YOU DO ANY OF THOSE JOBS WITH
11 YOUR CURRENT RESTRICTIONS?
- 12 A. I CANNOT DO ANY OF THOSE JOBS UNDER THE CURRENT
13 RESTRICTIONS.
- 14 Q. AND YOUR CURRENT LIFTING RESTRICTIONS ARE WHAT?
- 15 A. TEN POUNDS.
- 16 Q. AND PRIOR TO THIS INJURY OF NOVEMBER 21ST, 2011, HAD
17 YOU EVER HAD A WORKERS' COMPENSATION CASE BEFORE
18 WHERE YOU RECEIVED ANY SORT OF AWARD FOR ANY SORT OF
19 DISABILITY OR BE OUT OF WORK?
- 20 A. NO, SIR, NO WORKERS' COMP, NO UNEMPLOYMENT, NEVER
21 HAD ANYTHING LIKE THAT.
- 22 Q. AND I THINK YOU TOLD ME YOU ONE TIME CUT YOUR FINGER
23 WORKING AS A WAITER?
- 24 A. YES, SIR.
- 25 Q. YOU HAD TO GO GET SOME STITCHES?

1 CLASSES ON WEDNESDAY.

2 Q. AND AFTER YOU LEFT BEN ARNOLD, DID YOU GO A PERIOD
3 WITHOUT WORKING WHILE YOU WAITED FOR SNELLING TO TRY
4 TO FIND YOU OTHER WORK?

5 A. YES, SIR, I WAITED FOR A LITTLE WHILE, AND THEN I
6 GOT HIRED WAITING TABLES AGAIN.

7 Q. AND DID EVENTUALLY YOU GET EMPLOYMENT BACK THROUGH
8 SNELLING?

9 A. THE FIRST DAY I WENT TO THE WAITING TABLES JOB,
10 SNELLING CALLED ME WITH A JOB OFFER.

11 Q. AND THAT JOB WAS WORKING WHERE?

12 A. ALSIDE REVERE.

13 **BY MR. WHITE:**

14 AND IN LOOKING AT PAGE 82 OF THE APAs, YOUR
15 HONOR.

16 **DIRECT EXAMINATION RESUMED BY MR. WHITE:**

17 Q. IT LOOKS LIKE THAT WAS YOUR FIRST PAYCHECK THERE.
18 WHAT WERE YOU MAKING AN HOUR THERE?

19 A. I BELIEVE \$13 AN HOUR.

20 Q. AND DID YOU HAVE ANY CONVERSATIONS WITH ANYBODY AT
21 SNELLING ABOUT THE NUMBER OF HOURS YOU WOULD BE
22 WORKING OR WHAT THAT JOB PROVIDED AS FAR AS PAY AND
23 FULL-TIME EMPLOYMENT?

24 A. THEY SAID THE STORE WAS OPEN FROM SEVEN IN THE
25 MORNING UNTIL FOUR IN THE AFTERNOON, AND THERE WAS A

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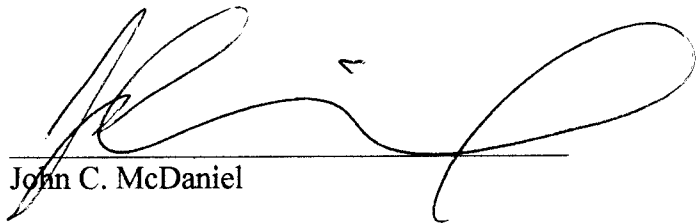
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PROOF OF SERVICE

I certify that I have served Appellant's Response to Respondents' Motion by depositing a
copy in the U.S. Mail, postage paid on December 15, 2014 addressed to the below:

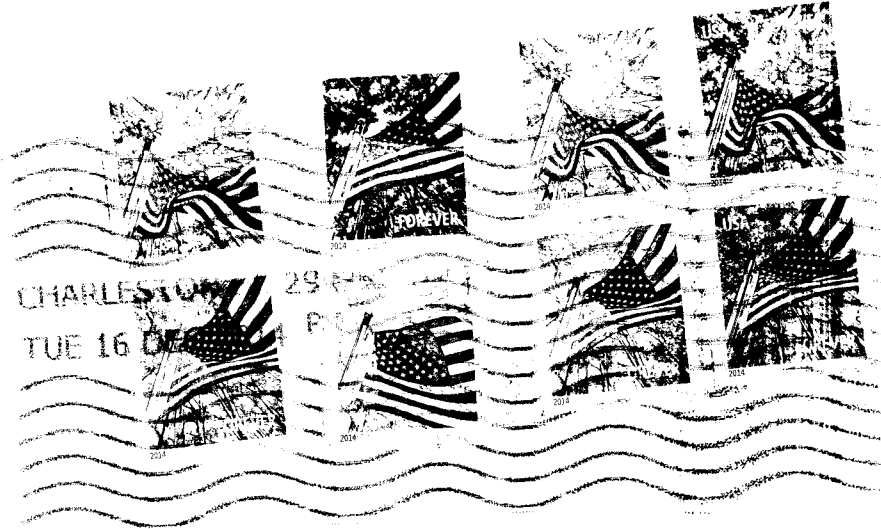
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John C. McDaniel

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