

78070

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

RECEIVED

DEC 07 2015

SC Court of Appeals

APPEAL FROM THE  
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

T. Scott Beck, Commissioner

SCWCC File No. 1402080

John Faubert,.....Respondent.

v.

University of SC Apprentice Students, Employer, and State Accident Fund,  
Carrier.....Appellants.

NOTICE OF APPEAL

University of SC Apprentice Students and the State Accident Fund appeal the Order of the Honorable T. Scott Beck, Panel Chair, of the Appellate Panel of the Worker's Compensation Commission dated July 20, 2015. Appellants received written notice of entry of this order on November 3, 2015.

December 3, 2015



Peter P. Leventis, IV  
McKay, Cauthen, Settana & Stublely, PA  
Post Office Box 7212  
Columbia, South Carolina 29202-7217  
(803) 256-4645  
Attorney for Appellants

Other Counsel of Record:

Zandra L. Johnson, Esquire  
The Law Firm of Zandra Johnson, LLC  
330 East Coffee Street  
Greenville, SC 29601  
(864) 527-3153  
Attorney for Respondent

## GROUNDNS FOR APPEAL

1. Did the Appellate Panel of the Workers' Compensation Commission err in finding as an issue of fact, and/or concluding as a matter of law, that the applicable statute for determination of the appropriate average weekly wage of the Claimant was controlled, or partially controlled by S.C. Code Ann. §42-1-40, when such a finding was not supported by the evidence, and contrary to South Carolina law?
2. Did the Appellate Panel of the Workers' Compensation Commission err in failing to conclude as a matter of law, that §42-7-65, and the case of *Smith v. Barnwell County*, 384 S.C. 520, 682 S.E.2d 828 (2009) were the controlling authority applicable to the determination and calculation of the average weekly wage and corresponding compensation rate in this matter, when failed to make such a conclusion is contrary to South Carolina law on this point?
3. Did the Appellate Panel of the Workers' Compensation Commission err in finding as an issue of fact, and/or concluding as a matter of law, that the Claimant was permitted to 'stack' his wages from a second job in order to determine the calculation of his average weekly wage and corresponding compensation rate in this matter, when such a holding was not supported by the evidence and/or contrary to South Carolina law?
4. Did the Appellate Panel of the Workers' Compensation Commission err in finding as an issue of fact, and/or concluding as a matter of law, that the Claimant was entitled to the difference in temporary total, or temporary partial, disability benefits for any time period or periods, based on the additional wages he made while working with another employer, when such a holding was not supported by the evidence in the evidence and contrary to South Carolina law?

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

RECEIVED

DEC 07 2015

SC Court of Appeals

APPEAL FROM THE  
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

T. Scott Beck, Commissioner

SCWCC File No. 1402080

John Faubert,.....Respondent.

v.

University of SC Apprentice Students, Employer, and State Accident Fund,  
Carrier.....Appellants.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the attorney of record for John Faubert as well as the South Carolina Workers' Compensation Commission by depositing a copy of it in the United States Mail, postage prepaid, on December 3, 2015, addressed as follows:

Zandra L. Johnson, Esquire  
The Law Firm of Zandra Johnson, LLC  
330 East Coffee Street  
Greenville, SC 29601

The Honorable Amy Bracy, Judicial Director  
S.C. Workers' Compensation Commission  
1333 Main Street, Ste. 500  
Columbia, SC 29201

December 3, 2015



Peter P. Leventis, IV, Esq.  
McKay, Cauthen, Settana & Stublely, P.A.  
Post Office Box 7217  
Columbia, South Carolina 29202  
(803) 256-4645  
Attorney for Appellants

Julius W. McKay, II  
Mark D. Cauthen  
Daniel R. Settana, Jr.  
M. Stephen Stublely  
Janet Brooks Holmes  
Peter P. Leventis, IV\*  
Kelli L. Sullivan\*  
George D. Gallagher\*  
Temus C. Miles, Jr.  
David M. Bornemann  
Brandon P. Jones  
James E. L. Fickling+  
Richard E. Marsh, III  
Charles A. Kinney, Jr.+  
Erica E. Loudin

Of Counsel:  
C. E. Hardin, Jr.

Law Offices  
**McKAY, CAUTHEN, SETTANA & STUBLEY, P.A.**

Post Office Box 7217  
Columbia, South Carolina 29202-7217

1303 Blanding Street  
Columbia, South Carolina 29201

Douglas McKay, Jr.  
(1917-2008)

Telephone  
(803) 256-4645  
Fax

(803) 765-1839

E-Mail

pleventis@mckayfirm.com

Web

www.mckayfirm.com

**RECEIVED**  
**RECEIVED**  
C. Certified Mediator  
Also licensed in N.C.

DEC 07 2015

DEC 7 2015

SC Court of Appeals  
SC Court of Appeals

December 3, 2015

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
1015 Sumter Street, Suite 200  
Columbia, SC 29201

**RE: John Faubert v. USC Apprentice Students**

*WCC No.: 1402080*

*Claim No.: 2014-000331*

*DOA: 01/29/2014*

*Our File No.: 1200-0071*

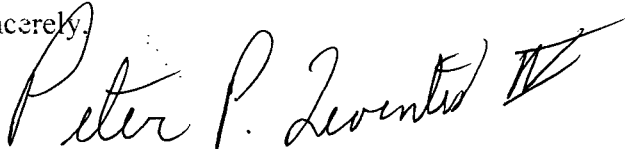
Dear Ms. Kitchings:

Enclosed for filing are the original and three copies of a notice of appeal in the above referenced matter. Also enclosed are the following:

- 1) Notice of Appeal, and attached grounds of the appeal;
- 2) Proof of Service of the notice of appeal on the respondent;
- 3) A copy of the order to be challenged on appeal; and
- 4) A filing fee of \$100.00.

I would appreciate very much if you would file the notice and return the copy to me in the self-addressed stamped envelope that I have provided. By copy of this letter, I am serving the Notice upon all counsel of record.

Sincerely,



Peter P. Leventis, IV

PPL/ecs

Enclosures

cc: Zandra L. Johnson, Esquire (w/encl)  
Amy Bracy, Judicial Director of the S.C.W.C.C. (w/encl)  
Meggan Damiano (w/encl)

LAW OFFICES

McKAY, CAUTHEN,  
SETTANA & STUBLEY, P.A.

Post Office Box 7217  
COLUMBIA, SOUTH CAROLINA 29202-7217

COLUMBIA  
SC 290  
03 DEC 15  
PM 3 L



U.S. POSTAGE PITNEY BOWES



ZIP 29201 \$001.14<sup>5</sup>  
02 1W  
0001374580 DEC. 03. 2015

The Honorable **Jenny Abbott Kitchings**  
Clerk, South Carolina Court of Appeals  
1015 Sumter Street, Suite 200  
Columbia, SC 29201

1200-0071

**RECEIVED**  
DEC 07 2015  
SC Court of Appeals

29201374750

