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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission
Appellate Panel

Trial Court Case No: 1106689

RECEIVED
DEC 16 2015
SC Court of Appeals

Johnny Tucker, Employee, Appellant,
v.
SC Department of Transportation, Employer,
and State Accident Fund, Carrier, Respondents.

NOTICE OF APPEAL

Appellant, Johnny Tucker, appeals the Decision and Order of the SC Workers' Compensation Commission Appellate Panel filed September 11, 2015, and the SC Workers' Compensation Commission Judicial Conference Decision and Order November 16, 2015. Appellant received notice of entry of the Appellate Panel Decision and Order (the final Agency Decision) according to an "Certificate of Service" by email on November 16, 2015.

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 Appellant would request a review pursuant to S.C. Code §42-17-60 by the Court of the Findings of Fact,

Conclusions of Law and Decision rendered in this matter based upon a review of the evidence, the positions and the legal precedents cited to the Commission and the entire Record before the Commission for decision.

2. That the Commission erred as a matter of law by denying the Appellant a Hearing on his claim for a Change of Condition on the basis that although the Appellant had timely filed a, "claim" alleging a Change of Condition had occurred well within the twelve (12) months of the last payment of compensation, the Appellant did not file for a Hearing on that claim until after the twelve (12) months following the last payment of compensation.

3. That the Commission erred as a matter of law by denying the claim for a Change of Condition because the Appellant did not timely file for a Change of Condition with the Commission not on the basis that the Appellant did not file a "claim" for a Change of Condition with the Commission within one (1) year pursuant to Statute and Regulation, but on the basis that the Appellant did not "request a Hearing" on the claim of a Change of Condition within one (1) year. This was error because the allegation that the Change of Condition was not timely filed is an affirmative defense which must be plead pursuant to statute and Commission Regulation and it was not plead in the responsive Form 51 in this case.

4. That the Commission erred as a matter of law by denying the claim for a Change of Condition where South Carolina Workers'

Compensation Reg. 67-206 after the claim for a Change of Condition was filed requires that employer's representative, "shall immediately contact the Claimant", and where Reg. 67-601 provides that the, "Commission will not set a Hearing until a conflict arises," and where the undisputed evidence is that the Appellant on four (4) separate occasions contacted counsel for the Respondents and/or the adjuster for the Respondents beginning on March 18, 2013 and continuing through at least July 26, 2013 and where there is no evidence that the Respondents ever notified counsel or Appellant of a conflict, the Respondents are estopped and/or they have waived the affirmative defense of not timely filing for a Change of Condition under S.C. Code §42-17-90.

5. That the Commission erred as a matter of law by denying the claim for a Change of Condition where S.C. Code §42-17-90, our Change of Condition statute is very clear that the claimant must file an application alleging a Change of Condition which the Commission refers to in its own regulations as, "a claim" involving a Change of Condition (Reg. 67-602B) within one (1) year of the last date of the payment of compensation, the Commission's Decision requiring that the claimant must not only file an application by filing a claim but must file for a Hearing to meet the requirements of the Act, denies the Appellant due process of law under federal and state law. The Commission, not the parties, has bifurcated the, "application process" under its regulations.

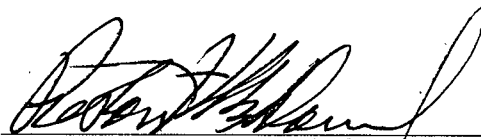
6. That the Commission erred as a matter of law by failing to make a Decision and make Findings of Fact and Conclusions of Law on the application for benefits based on an undiagnosed condition, where the Form 50 Request for Hearing alleged both a Change of Condition for the worse and also an undiagnosed condition.

7. The Commission erred as a matter of law by failing to apply the fundamental construction principle applied to the Act, that the Act and its provisions shall be liberally construed in favor of benefits to the injured worker.

8. The Commission erred as a matter of law by not rendering a decision on the Motion for Rehearing and by simply not denying but, "dismissing" the Motion on a Form Order without any indication of consideration of the Motion.

The above-referenced Exceptions are subject to amendment upon receipt of the Transcript in this matter.

Respectfully submitted,



Preston F. McDaniel, Esquire
MCDANIEL LAW FIRM
1315 Elmwood Avenue
Columbia, South Carolina 29201
(803) 771-7211
Attorney for Appellant

December 14, 2015

Other Counsel of Record:

Sarah S. Alphin, Attorney
Willson Jones Carter & Baxley
4500 Fort Jackson Boulevard
Columbia, South Carolina 29209
(803)227-2885
Attorney for Respondents

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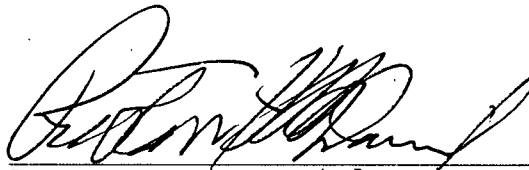
v.

SC Department of Transportation, Employer,
and State Accident Fund, 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 December 14, 2015 addressed to: Ms. Amy Bracy, Judicial Director, South Carolina Workers' Compensation Commission, Post Office Box 1715, Columbia, South Carolina 29202 **AND** also serving a copy upon Sarah S. Alphin, Attorney, Willson Jones Carter & Baxley, 4500 Fort Jackson Blvd., Columbia, SC 29209.

Dated: December 14, 2015



Preston F. McDaniel
MCDANIEL LAW FIRM
1315 Elmwood Avenue
Columbia, South Carolina 29201
(803) 771-7211

Attorney for Appellant

McDANIEL LAW FIRM
ATTORNEYS AND COUNSELORS AT LAW
1315 ELMWOOD AVENUE
COLUMBIA, SOUTH CAROLINA 29201

Proudly representing injured workers
for over 30 years.

Preston F. McDaniel

Matthew Robertson

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Telephone (803) 771-7211

Facsimile (803) 252-0709

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December 14, 2015

SC Court of Appeals

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

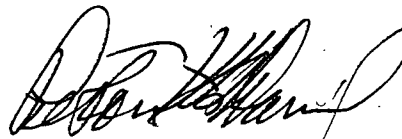
**RE: Johnny Tucker, Employee, v. SC Department of
Transportation, Employer, and State Accident Fund,
Carrier.
Trial Court Case No. 1106689**

Dear Ms. Kitchings:

Enclosed for filing is a Notice of Appeal in the above case.
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.
3. A Filing fee of \$100.00.

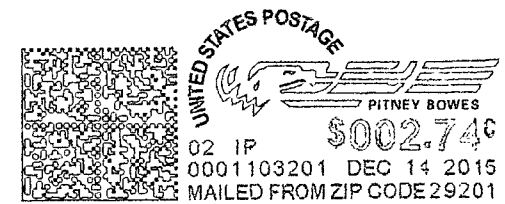
Sincerely yours,



Preston F. McDaniel

PFM/kth
Enclosures

cc: Sarah S. Alphin, Attorney
Ms. Amy Bracy, Judicial Director, SCWCC



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