

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Appellate Case No. 2014-001815

RECEIVED

SEP 25 2015
SC Court of Appeals

Clarence Winfrey, Employee, ... Appellant,

v.

Archway Services, Inc., Employer,
and American Fire & Casualty Insurance
Company, Carrier, ... Respondents.

RECORD ON APPEAL
VOLUME I OF III

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

Counsel for Appellant

Brett H. Bayne, Esquire
MCANGUS GOUDELOCK & COURIE
Post Office Box 12519
Columbia, South Carolina 29211
(803) 779-2300

Counsel for Respondents

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Columbia, South Carolina 29211
(803) 779-2300

Counsel for Respondents

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**ORDER ON PARTIES' MOTIONS
OF
T. SCOTT BECK, COMMISSIONER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION**

SCWCC FILE NO.: 1306305

Clarence Winfrey,

Claimant

v.

Archway Services, Inc.,

Employer, and

Liberty Mutual Ins. Co.,

Carrier, Defendants.

Hearing held in Richland County,
South Carolina on November 13th, 2013
Per notice timely and properly served upon all Parties of Interest.

Appearances: Preston F. McDaniel, Esquire, for Claimant

 Landon L. Hughey, Esquire, and Brett H. Bayne,
 Esquire for Defendants

Filed: December 5, 2013

STATEMENT OF THE CASE

This matter was originally set for a Hearing at the request of the Claimant by operation of S.C. Code § 42-9-260(C). Prior to the Hearing, a number of Motions were filed by the parties in accordance with 25A S.C. Regs. 67-215 (2012). It is necessary to dispose of the pending motions prior to the adjudication of the issues raised by the Claimant's Form 15, Section III. This Order addresses all the issues raised in the parties Motions. The merits of the issues raised on Claimant's Form 15, Section III, will be addressed by a separate Decision and Order.

Defendants filed a Motion on September 27th, 2013 to Quash Claimant's Subpoena, dated September 18th, 2013, for the deposition of Terri Hughes as managing agent, and to compel the production of certain documents in possession of Defendants. Defendants asserted that the subpoena did not comply with the provisions of the South Carolina Workers' Compensation Act or the Rules of Civil Procedure addressing the use of subpoenas, did not properly request testimony of a representative of Defendants, and was not properly served on an out of state individual. Defendants also asserted that they should not be required to produce the documents requested because they were protected as privileged attorney/ client correspondence, trial preparation, and/ or attorney work product. Claimant asserted that Terri Hughes was a managing agent or officer of Defendants and he was thus entitled to take her testimony and that he was not seeking production of documents subsequent to Defendant's retention of counsel.

Claimant filed a letter on October 4th, 2013 requesting an Order and Rule to Show Cause be issued requiring Defendants to appear and show cause why it should not be found in contempt for failure to comply to a lawful subpoena. Defendants asserted that this motion was not properly made.

Defendants filed a Motion on October 21st, 2013 to Compel the Deposition of Claimant and requesting an award of costs and fees associated with the deposition. Claimant asserted he was not properly served with notice of the deposition.

Defendants filed on October 21st, 2013 a Motion for a Postponement/ Adjournment of the Hearing on the merits of Claimant's Form 15, Section III, on the grounds that the issue was not ripe for adjudication pending the outcome of a related matter currently before the Court of Common Pleas. Claimant asserted the matter was ripe for adjudication and that Claimant was entitled to a Hearing within sixty days of the date of his request by operation of § 42-9-260.

RULINGS OF LAW

It is decided as a matter of law that:

Defendant's Motion to Quash the September 18th, 2013 Subpoena as it pertains to the deposition testimony of Terri Hughes is GRANTED. The Act provides "[a]ny party to a proceeding pending under this Title or his attorney may cause the deposition of witnesses, either within or without the State, to be taken either by Commission or *de bene esse*. § 42-3-160. Such depositions are subject to the same rules as apply to depositions in the Court of Common Pleas, including the rules regarding notice. *Id.* Rule 30 of the South Carolina Rules of Civil Procedure govern the taking of depositions in the Court of Common Pleas. A party may name as the deponent a public or private corporation, partnership, association, or agency. Rule 30(b)(6) SCRCF. In that event, the named entity shall designate the appropriate person to testify on its behalf. *Id.* In the instant case, Claimant did not name "a public or private corporation, partnership, association, or agency" and provide Defendants an opportunity to designate an appropriate person to testify on its behalf. Therefore, Claimant's subpoena did not comply with the express terms of Rule 30(b)(6) and therefore the Defendant's Motion to Quash the portion of the subpoena seeking to compel the deposition testimony of Terri Hughes must be GRANTED.

Defendant's Motion to Quash the September 18th, 2013 Subpoena as it pertains to the request for the production of documents in the possession of Defendants is DENIED. Defendants raised as a defense that the records sought were protected as privileged attorney/ client correspondence, trial preparation, and/ or attorney work product. The Rules of Civil Procedure provide

Information Withheld. When a party withholds information otherwise discoverable under these rules by claiming that it is privileged or subject to protection as trial preparation material, the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing the information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.

Rule 26, SCRCP.

If Defendants believe records sought qualify as privileged, the proper procedure is to provide a privilege log as provided in Rule 26.

Claimant's October 4th, 2013 Motion requesting the issuance of an Order and Rule to Show Cause requiring Defendants to appear and show cause why it should not be found in contempt for failure to comply to a lawful subpoena is DENIED. Motions before the Commission are controlled by R.67-215. Claimant's Motion does not comply with the provisions of R.67-215(D) and was not submitted with the proper filing fee. Therefore, this Motion was not properly plead and is DENIED.

Defendant's October 21st, 2013 Motion to Compel the Deposition of Claimant is MOOT. The parties stipulated at the Hearing that the deposition of the Claimant had been taken.

Defendant's October 21st, 2013 Motion for Sanctions to be assessed against Claimant for failure to appear at the deposition is DENIED. Defendants were aware prior to the time and date scheduled for the initial deposition that Claimant would be unavailable and had alternate means by which to schedule the deposition of the Claimant. Furthermore, the deposition of the Claimant has now been taken. Therefore, Defendant's Motion for Sanctions is DENIED.

Defendant's Motion for a Continuance/ Postponement of the Hearing on the merits of Claimant's Form 15, Section III is DENIED. Defendants requested a postponement, pending the outcome of a Declaratory Judgment action filed by Claimant in the Court of Common Pleas asking the court to declare § 42-9-260 unconstitutional. The Defendants could offer no assurances that the Circuit Court action in question would be resolved

within sixty days from the date Claimant filed his Form 15, Section III, on or about September 23rd, 2013. Rather, all parties believe the Circuit Court action will take much longer to resolve. The Act provides “[a]n employee whose disability payments have been terminated or suspended pursuant to this section may request a hearing to have the payments reinstituted. The hearing *must* be held within sixty days of the date of the employee’s request for a hearing.” § 42-9-260(C) (Emphasis added). Unless and until § 42-9-260 is declared unconstitutional by a court of competent jurisdiction, the plain language of § 42-9-260(C) makes it clear that the Commission does not have discretion to issue a postponement of the hearing beyond sixty days from the date the it is requested by the Claimant.

ORDER

IT IS THEREFORE ORDERED that Defendant’s Motion to Quash the September 18th, 2013 Subpoena as it pertains to the deposition testimony of Terri Hughes is GRANTED. Defendants, and Terri Hughes specifically, are absolved of any duty to appear and offer sworn testimony in response to Claimant’s September 18th, 2013 subpoena.

IT IS FURTHERMORE ORDERED that Defendant’s Motion to Quash the September 18th, 2013 Subpoena as it pertains to the request for the production of documents in the possession of Defendants is DENIED. Defendants are Ordered to provide the records sought by the subpoena within thirty days of the date of this Order. If Defendants believe records sought qualify as privileged, Defendants shall provide a privilege log as required by Rule 26, SCRPC.

IT IS FURTHERMORE ORDERED that Claimant’s October 4th, 2013 Motion requesting the issuance of an Order and Rule to Show Cause requiring Defendants to appear and show cause why it should not be found in contempt for failure to comply to a lawful subpoena is DENIED.

IT IS FURTHERMORE ORDERED that Defendant’s October 21st, 2013 Motion to Compel the Deposition of Claimant is MOOT.

IT IS FURTHERMORE ORDERED that Defendant's Motion for a Continuance/ Postponement of the Hearing on the merits of Claimant's Form 15, Section III is DENIED. A Hearing on the merits of Claimant's request was conducted on November 13th, 2013 and a Decision and Order shall be forthcoming.

AND SO IT IS ORDERED!



T. Scott Beck, Commissioner

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or by depositing a copy hereof, postage paid, in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

December 5, 2013

By: Amy Bracy, Administrative Assistant to Commissioner Beck

**DECISION AND ORDER
OF
T. SCOTT BECK, COMMISSIONER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION**

SCWCC FILE NO.: 1306305

Clarence Winfrey,

Claimant

v.

Archway Services, Inc.,

Employer, and

Liberty Mutual Ins. Co.,

Carrier, Defendants.

Hearing held in Richland County,
South Carolina on November 13th, 2013
Per notice timely and properly served upon all Parties of Interest.

Appearances: Preston F. McDaniel, Esquire, for Claimant

Landon L. Hughey, Esquire, and Brett H. Bayne, Esquire for
Defendants

Filed: December 5, 2013

STIPULATIONS

Prior to the Hearing, the parties stipulated to the following:

1. The South Carolina Workers' Compensation Commission has jurisdiction of this claim;
2. Venue, set in Richland County, South Carolina, is proper;
3. Claimant and Employer were both subject to the South Carolina Workers' Compensation Act at all times relevant to this claim;
4. The sole purpose of the Hearing requested by Claimant pursuant to his Form 15, Section III is for the Commission to determine whether Defendants properly terminated workers' compensation benefits in accordance with § 42-9-260(B)(3); and
5. No documentary evidence dated after September 13th, 2013 would be considered by the undersigned in the adjudication of the issues in dispute.

STATEMENT OF THE CASE

This matter was set for a Hearing at the request of the Claimant pursuant to a Form 15, Section III, filed on September 23rd, 2013. Claimant alleges he suffered an injury by accident arising out of and in the course of his employment with Defendants when he sustained an electrical shock on May 22nd, 2013, resulting in an injury to his heart, left hand/arm/shoulder, neck, head (brain), and chest. Claimant asserts that Defendants accepted the claim and began paying temporary total disability benefits and medical treatment, but terminated all benefits on or about September 12th, 2013, citing § 42-9-260(B)(3) as authority to do so. Claimant asserts this termination of benefits was improper under the statute, and that Defendants should be assessed penalties provided for in § 42-9-260(G). Claimant asserts that he has filed a Form 50 Hearing request asking the Commission to award workers' compensation benefits, and that the sole purpose of the Hearing is to determine whether Defendants properly terminated benefits in accordance with § 42-9-260.

Defendants allege that Employer was aware Claimant suffered a medical emergency and began providing workers' compensation benefits, as a precaution to mitigate future damages should the claim be found compensable, to allow Defendants an opportunity to conduct a thorough investigation of the alleged incident to determine if it was a compensable workers' compensation claim. Defendants assert that on or about September 12th, 2013, it properly terminated workers' compensation benefits, following a good faith investigation by Employer that revealed grounds for denial of the claim. Defendants assert that this termination was lawful and proper by action of § 42-9-260(B)(3) and that therefore it should not be subject to sanctions under § 42-9-260(G).

Prior to the Hearing the parties filed a number of Motions with the Commission. These Motions were considered at the Hearing and were addressed by a separate Order issued by the undersigned on December 5th, 2013, which is incorporated herein by reference.

Following the resolution of the Motions, the parties addressed the merits of the claim raised on Claimant's Form 15, Section III. Both parties offered APA Submissions and Exhibits. Claimant renewed his objection first raised in his letter to the Commission dated November 7th, 2013 objecting to the submission of Defendant's Pre-Hearing Brief, Notice of Witnesses, APA Submissions and Exhibits as untimely. Claimant was offered the opportunity to have the Hearing postponed in order to allow him adequate time to respond to the Defendant's Pre-Hearing Brief, Notice of Witnesses, APA Submissions and Exhibits. Claimant declined to postpone the Hearing, and the following records were received into evidence, with the stipulation that no evidence dated after the date Claimant had actual notice of the denial, September 13th, 2013, would be reviewed or considered by the undersigned:

CLAIMANT'S APA SUBMISSIONS AND EXHIBITS

1. Dr. Lanneau Lide, SC Heart Center, 09/16/13- 10/04/2013, p. 1-2.
2. Dr. Jeffery Travis, Lexington Cardiovascular Assoc., 09/30/13, p. 3.
3. Lexington Medical Center, 05/28/2013 – 05/29/2013, p. 4-8.
4. Dr Karen Greenfield, Doctors' Care, 05/28/2013 – 09/17/2013, p. 9-16.
5. Kristy Thompson, RN, Genex Services, Inc , 07/22/2013, p. 17-20.

6. "Correspondence", 07/30/2013- 08/07/2013, p. 21-25.

DEFENDANT'S APA SUBMISSIONS AND EXHIBITS

1. Doctors' Care, 05/28/2013, p. 1.
2. South Carolina Heart Center, 05/28/2013, p. 2-4.
3. Jeffrey A. Travis, M.D., Lexington cardiovascular Surgery, 05/28/2013, p. 5-7.
4. Statement of Bobby Ruppe, 09/23/2013, p. 8.
5. Emails between Bobby Ruppe and Claimant, 05/27/2013, p. 9.
6. Driver's Daily Log, 05/22/2013- 05/23/2013, p. 10-11.
7. Letter from Preston McDaniel to Defense Counsel, 10/16/2013, p. 12.
8. Motion to Quash the Deposition of the Adjuster, 09/27/2013, p. 13-21.
9. Motion to Compel Deposition and For Costs, 10/21/2013, p. 22-24.
10. Motion for Continuance, 10/21/2013, p. 25-30.
11. Summons and Complaint filed by Preston McDaniel, 09/27/2013, p. 31-48.
12. Temporary Restraining Order, 10/01/2013, p. 49-51.

FINDINGS OF FACT

Based on my consideration of the relevant evidence submitted into the record, excluding all evidence dated after September 13th, 2013, as well as the testimony of the Claimant offered at the Hearing, I make the following findings of fact:

1. Claimant suffered an incident while working on electrical equipment at work that he believed to be an electrical shock on May 22nd, 2013. This is based on the testimony of the Claimant as well as the medical records submitted by the Claimant from Lexington Medical Center.
2. Claimant suffered a myocardial infarction on May 28th, 2013. This is based on the medical records submitted by the Claimant from Lexington Medical Center.

3. Claimant alleged that he suffered an injury by accident arising out of and in the course and scope of his employment to his heart, left hand/arm/shoulder, neck, head (brain), and chest, and filed a claim for workers' compensation benefits. This is based on the Form 50 Employee's Notice of Claim filed by Claimant on June 6th, 2013.
4. Defendants began providing Claimant with temporary total disability benefits beginning on June 1st, 2013 and continuing through September 14th, 2013. This is based on the Form 19 Status Report and Compensation Receipt filed by Defendants on September 12th, 2013.
5. Defendants also provided Claimant with medical treatment between the alleged date of injury and September 12th, 2013. This is based on the Form 19 Status Report and Compensation Receipt filed by Defendants on September 12th, 2013.
6. Defendants terminated Claimant's workers' compensation benefits 114 days after employer could have had notice of his alleged injury, on September 12th, 2013. The termination was based on a denial of the claim following an investigation. This is based on the Form 15, Section II dated September 12th, 2013.
7. The Form 15, Section II was received by the Commission no later than September 18th, 2013. This is based on the records in the Commission's file and the Form 15, Section III filed by the Claimant.
8. The Form 15, Section II documented that the reason for termination was that the employee fails to meet the burden of a compensable injury under the S.C. Workers' Compensation Act. This is based on the Form 15, Section II dated September 12th, 2013.
9. Claimant received the Form 15, Section II in a timely manner and was able to exercise his rights under § 42-9-260(C) and R.67-504(C). This is based on the Form 15, Section III filed by the Claimant. Claimant alleged that the Form 15, Section II was not served on him properly pursuant to R.67-504(A) because he was only served with one copy of the Form 15, Section II and the documented reason for termination was printed on the Form 15 under Section II, rather than on an attached document. However, Claimant was in no way prejudiced from exercising his rights under the Act by the manner of service of the Form 15, Section II. This is evident by the fact that Claimant filed a Form 15, Section III asserting his rights shortly after receiving the Form 15, Section II. Claimant had the benefit of counsel at the time he was served with the Form 15, Section II.

rendering the requirement to provide him with two copies unnecessary. Therefore, Defendants alleged failure to provide Claimant with a second copy of the Form 15, Section II, and including the reasons for denial on the form itself rather than on a separate attachment are not grounds to find the termination of benefits was improper.

10. Claimant did not provide any evidence at the Hearing to indicate that Defendants acted in anything other than good faith during the investigation and eventual denial of the claim. This is based on the evidence (or lack thereof) submitted by the Claimant at the Hearing.
11. I find the Claimant's argument that the apparent failure of Defendants to interview Claimant prior to the denial of the claim as evidence of bad faith is unpersuasive. Claimant is alleging a medically complex condition resulting from an injury by accident. Defendants have not denied that Claimant suffered an incident he believed to be an electrical shock on May 22nd, 2013. The causal relation between Claimant's alleged electrical shock and his current medical condition is one that can best be determined by review of the expert medical reports, to which Defendants had access by operation of § 42-15-95. Claimant's statement would have been of little value to Defendants in attempting to determine whether his heart condition was causally related to the alleged electrical shock.

RULINGS OF LAW

Based on the foregoing, I make the following rulings of law:

1. The Workers' Compensation Act provides "[o]nce temporary disability payments are commenced, the payments may be terminated or suspended immediately at any time within the one hundred fifty days if . . . a good faith investigation by the employer reveals grounds for denial of the claim." § 42-9-260(B)(3).
2. Defendants properly terminated Claimant's workers' compensation benefits on September 12th, 2013 by meeting all the required elements for termination under § 42-9-260(B)(3).
 - a. Benefits were commenced on or about June 1st, 2013. *See* Finding of Fact No. 4.

- b. Benefits were terminated on or about September 12th, 2013, well within 150 days after the employer could have received notice of the injury. *See* Finding of Fact No. 6.
 - c. Defendants represented to the Commission they conducted a good faith investigation of the claim. *See* Form 15, Section II dated September 12th, 2013.
 - d. Claimant did not provide any evidence that Defendants conducted their investigation in anything other than good faith. *See* Finding of Fact Nos. 10-11
 - e. Defendants represented the grounds for denial revealed during their investigation was a good faith belief that "Claimant fails to meet the burden of a compensable injury under the SC Workers' Compensation Act". *See* Form 15, Section II, dated September 12th, 2013. Under the Act, Claimant bears the burden of proving by a preponderance of the evidence that it is more likely than not that Claimant suffered an injury by accident arising out of and in the course of his or her employment resulting in disability. *See* § 42-1-160; *Hall v. Desert Aire, Inc.*, 376 S.C. 338, 656 S.E.2d 753 (S.C. App. 2009) ("A claimant has the burden of proving facts sufficient to allow recovery under the Workers' Compensation Act"); *Fowler v. Abbott Motor Co.*, 236 S.C. 226, 113 S.E.2d 737 (1960) ("The burden rests upon claimants to show by competent testimony, not only the fact of injury, but that it occurred in connection with the employment of the deceased; and to furnish evidence from which the inference can logically be drawn that the injury arose out of and in the course of the employment." (*Internal citations omitted*)); *S.C. Second Injury Fund v. Liberty Mut. Ins. Co.*, 353 S.C. 117, 576 S.E.2d 119 (S.C. App. 2003) ("The burden lies with the workers' compensation claimant to demonstrate causation by a preponderance of the evidence.").
 - f. Therefore, a belief of Defendants formed following a good faith investigation that Claimant had not met his burden of proving compensability is adequate grounds for denial of the claim by the Defendants.
3. § 42-9-260(C) and R.67-504(C) provide a mechanism for a Claimant whose temporary disability benefits have been terminated by action of § 42-9-260(B)(3) to have an Order issued reinstating benefits following a Hearing held pursuant to a request made by Claimant on a Form 15, Section III. Counsel for Claimant stipulated on the record that

the sole purpose of the Hearing he had requested was to determine whether Defendants properly stopped benefits under § 42-9-260.

4. Based on the foregoing, I find that Defendants properly stopped benefits under § 42-9-260 on September 12th, 2013. Defendants terminated benefits on the justification that a good faith investigation reveals grounds for the denial of the claim. *See* Finding of Fact # 8. This is a permissible ground for termination under the statute. *See* § 42-9-260(B)(3). At the time Defendants terminated Claimant's benefits on September 12th, 2013, Defendants had access to Claimant's medical records by operation of § 42-15-95 and had knowledge of the course of Claimant's treatment through its Nurse Case Manager. *See* Claimant's APA Submission # 5, p. 17. It is possible for Defendants to have drawn a conclusion in good faith based on Claimant's medical records that he suffered from pre-existing medical conditions unrelated to his employment that could be contributing to his current symptoms that would justify denying the claim. *See e.g.* Claimant's APA Submission #3, p.4 ("Discharge Diagnosis(es) . . . 3. Coronary artery disease[,] . . . 5. Hypertension[,] 6. Congestive heart failure."). The fact that there also exists evidence that was available to Defendants that could lead to the conclusion that Claimant's current condition is causally related to a compensable injury by accident does not lead me to conclude that Defendant's termination of benefits was improper. Claimant bears the ultimate burden of proving his claim is compensable and he has requested the Commission provide him an opportunity to do so.
5. Specifically, Claimant has requested a Hearing on the merits of whether Claimant sustained a compensable injury by accident and is entitled to benefits by operation of the Form 50 Employee's-Request for Hearing filed on October 21st, 2013. Therefore, the question of whether Claimant sustained a compensable injury by accident and is entitled to benefits under the Act will be decided by the Commission at the Hearing set pursuant to Claimant's Form 50 Request for Hearing.
6. Claimant has availed himself of all relief available under § 42-9-260 and R.67-504 and, therefore, these provisions of the Workers' Compensation Act are no longer in contention in Claimant's claim for benefits against Defendants.

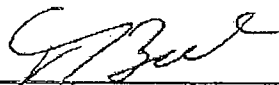
ORDER

IT IS THEREFORE ORDERED that Defendants properly terminated benefits under § 42-9-260 on September 12th, 2013.

IT IS FURTHERMORE ORDERED that Claimant's request for sanctions against Defendants under § 42-9-260(G) for failure to comply with the provisions of that statute is **DENIED**.

IT IS FURTHERMORE ORDERED that all other issues in contention, specifically including the question of whether Claimant sustained an injury by accident arising out of and in the course of his employment with Defendants resulting on compensable disability is preserved for adjudication at the Hearing set pursuant to Claimant's October 21st, 2013 Form 50 Employee's Request for Hearing.

AND SO IT IS ORDERED!



T. Scott Beck, Commissioner

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or by depositing a copy hereof, postage paid, in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

December 5, 2013

By: Amy Bracy, Administrative Assistant to Commissioner Beck

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 1306305

CLARENCE WINFREY,

Employee,

Claimant,

vs.

ARCHWAY SERVICES INC,

Employer,

AND

AMERICAN FIRE & CASUALTY
INSURANCE COMPANY c/o LIBERTY
MUTUAL GROUP,

Carrier,

Defendants.

**FULL COMMISSION DECISION
AND ORDER ON CLAIMANT'S
APPEAL FROM COMMISSIONER
BECK'S DECISION AND ORDER**

DATE OF HEARING:

Hearing held in Columbia, South Carolina on May 19, 2014.

APPEARANCES:

Claimant appeared and represented by Preston F. McDaniel, Esquire, of The McDaniel Law Firm of Columbia, South Carolina.

Defendants represented by Brett H. Bayne, Esquire of McAngus Goudelock & Courie, L.L.C. of Columbia, South Carolina.

PURPOSE OF THE HEARING: To determine all issues as set forth in Claimant's Form 30.

COMMISSIONER:

FILED:

July 25, 2014

STATEMENT OF THE CASE

This claim arises out of a work-related accident on May 22, 2013. On that date, Claimant was momentarily shocked by a rotisserie oven he was working on. Following the accident, Claimant continued to work for the remainder of the day and the following day. On May 28, 2013—six days after the accident—Claimant presented to Doctor's Care and Lexington Medical Center with severe three vessel coronary disease as well as an acute myocardial infarction which caused an acute ventricular septal defect. At Doctor's Care, Claimant reported he was having no chest pressure and had started sweating that morning (May 28th). At Lexington Medical Center, Claimant indicated he was not having chest pain but had been sweating. Following the diagnosis, Claimant underwent surgery to repair the ventricular septal defect caused by the myocardial infarction. The medical records in the case revealed that Claimant has a distinct family history of coronary disease with his father passing away at a similar age from coronary disease and a myocardial infarction. Further, the medical records indicated that Claimant was a 35 year pack-a-day smoker and drank a case of beer per week. Based on all of the medical records available to Carrier, this claim was ultimately denied by verbal communication to Claimant on September 13, 2013.

Following the denial of benefits, Claimant filed a Form 15, Section III requesting a hearing as well as a Summons and Complaint in Richland County Circuit Court alleging a bad faith denial of benefits, alleging that S.C. Code Ann. § 42-9-260 is unconstitutional, seeking a temporary restraining order to stop Defendants from denying the claim, and seeking an Order from Judge Lee finding the claim compensable and awarding benefits. Judge Lee issued and then rescinded the temporary restraining order sought by Claimant. A hearing on the merits of Claimant's Complaint has not been set by the Court. After the temporary restraining order was

rescinded, the Commission set Claimant's Form 15, Section III for a hearing before the Hearing Commissioner. In addition, Defendants filed several motions with the Commission including a Motion to Quash the deposition of the adjuster, a Motion to Quash discovery of the adjuster's claim file, and a Motion to Postpone the Hearing.

A hearing on all of the motions and on Claimant's Form 15, Section III was set on September 30, 2013 for November 11, 2013. Prior to the hearing, the Hearing Commissioner conducted a standard pre-hearing conference as well as a Motions Hearing wherein the Hearing Commissioner ruled on all outstanding issues raised by the motions including Defendants' Motion to Postpone. The Hearing Commissioner gave Claimant the opportunity to postpone the Form 15 hearing in order to spend time preparing for each of the motions that were timely served. Claimant turned down that opportunity. At the hearing, all parties agreed that the only issue for the Hearing Commissioner to determine was whether or not Defendants had conducted a good faith investigation. In order to make that determination, the Hearing Commissioner limited the review of evidence to only those documents produced prior to the date of denial – September 13, 2013. Following the hearing, the Hearing Commissioner issued a Decision and Order on December 5, 2013 finding that Defendants had conducted a good faith investigation. Thereafter, Claimant timely filed a Form 30 and this appeal followed. A hearing on this appeal was held on May 19, 2014 before the Full Commission. After hearing oral argument from both parties and considering the evidence submitted in the record, the Single Commissioner's Decision and Order is AFFIRMED AS MODIFIED.

SINGLE COMMISSIONER'S FINDINGS OF FACT

Based on my consideration of the relevant evidence submitted into the record, excluding all evidence dated after September 13th, 2013, as well as the testimony of the Claimant offered at the Hearing, I make the following findings of fact:

1. Claimant suffered an incident while working on electrical equipment at work that he believed to be an electrical shock on May 22nd, 2013. This is based on the testimony of the Claimant as well as the medical records submitted by the Claimant from Lexington Medical Center.
2. Claimant suffered a myocardial infarction on May 28th, 2013. This is based on the medical records submitted by the Claimant from Lexington Medical Center.
3. Claimant alleged that he suffered an injury by accident arising out of and in the course and scope of his employment to his heart, left hand/arm/shoulder, neck, head (brain), and chest, and filed a claim for workers' compensation benefits. This is based on the Form 50 Employee's Notice of Claim filed by Claimant on June 6th, 2013.
4. Defendants began providing Claimant with temporary total disability benefits beginning on June 1st, 2013 and continuing through September 14th, 2013. This is based on the Form 19 Status Report and Compensation Receipt filed by Defendants on September 12th, 2013. -
5. Defendants also provided Claimant with medical treatment between the alleged date of injury and September 12th, 2013. This is based on the Form 19 Status Report and Compensation Receipt filed by Defendants on September 12th, 2013.
6. Defendants terminated Claimant's workers' compensation benefits 114 days after employer could have had notice of his alleged injury, on September 12th, 2013. The

termination was based on a denial of the claim following an investigation. This is based on the Form 15, Section II dated September 12th, 2013.

7. The Form 15, Section II was received by the Commission no later than September 18th, 2013. This is based on the records in the Commission's file and the Form 15, Section III filed by the Claimant.
8. The Form 15, Section II documented that the reason for termination was that the employee fails to meet the burden of a compensable injury under the S.C. Workers' Compensation Act. This is based on the Form 15, Section II dated September 12th, 2013.
9. Claimant received the Form 15, Section II in a timely manner and was able to exercise his rights under § 42-9-260(C) and R.67-504(C). This is based on the Form 15, Section III filed by the Claimant. Claimant alleged that the Form 15, Section II was not served on him properly pursuant to R.67-504(A) because he was only served with one copy of the Form 15, Section II and the documented reason for termination was printed on the Form 15 under Section II, rather than on an attached document. However, Claimant was in no way prejudiced from exercising his rights under the Act by the manner of service of This is evident by the fact that Claimant filed a Form 15, Section III asserting his rights shortly after receiving the Form 15, Section II. Claimant had the benefit of counsel at the time he was served with the Form 15, Section II, rendering the requirement to provide him with two copies unnecessary. Therefore, Defendants alleged failure to provide Claimant with a second copy of the Form 15, Section II, and including the reasons for denial on the form itself rather than on a separate attachment are not grounds to find the termination of benefits was improper.

10. Claimant did not provide any evidence at the Hearing to indicate that Defendants acted in anything other than good faith during the investigation and eventual denial of the claim. This is based on the evidence (or lack thereof) submitted by the Claimant at the Hearing.
11. I find the Claimant's argument that the apparent failure of Defendants to interview Claimant prior to the denial of the claim as evidence of bad faith is unpersuasive. Claimant is alleging a medically complex condition resulting from an injury by accident. Defendants have not denied that Claimant suffered an incident he believed to be an electrical shock on May 22nd, 2013. The causal relation between Claimant's alleged electrical shock and his current medical condition is one that can best be determined by review of the expert medical reports, to which Defendants had access by operation of §42-15-95. Claimant's statement would have been of little value to Defendants in attempting to determine whether his heart condition was causally related to the alleged electrical shock.

SINGLE COMMISSIONER'S CONCLUSIONS OF LAW

Based on the foregoing, I make the following rulings of law:

1. The Workers' Compensation Act provides "[o]nce temporary disability payments are commenced, the payments may be terminated or suspended immediately at any time within the one hundred fifty days if... a good faith investigation by the employer reveals grounds for denial of the claim." § 42-9-260(B)(3).
2. Defendants properly terminated Claimant's workers' compensation benefits on September 12th, 2013 by meeting all the required elements for termination under § 42-9-260(B)(3).
 - a. Benefits were commenced on or about June 1st, 2013. See Finding of Fact No. 4.

- b. Benefits were terminated on or about September 12th, 2013, well within 150 days after the employer could have received notice of the injury. See Finding of Fact No. 6.
- c. Defendants represented to the Commission they conducted a good faith investigation of the claim. See Form 15, Section II dated September 12th, 2013.
- d. Claimant did not provide any evidence that Defendants conducted their investigation in anything other than good faith. See Finding of Fact Nos. 10-11
- e. Defendants represented the grounds for denial revealed during their investigation was a good faith belief that "Claimant fails to meet the burden of a compensable injury under the SC Workers' Compensation Act". See Form 15, Section II, dated September 12th, 2013. Under the Act, Claimant bears the burden of proving by a preponderance of the evidence that it is more likely than not that Claimant suffered an injury by accident arising out of and in the course of his or her employment resulting in disability. See § 42-1-160; *Hall v. Desert Aire, Inc.*, 376 S.C. 338, 656 S.E.2d 753 (S.C. App. 2009) ("A claimant has the burden of proving facts sufficient to allow recovery under the Workers' Compensation Act".); *Fowler v. Abbott Motor Co.*, 236 S.C. 226, 113 S.E.2d 737 (1960) ("The burden rests upon claimants to show by competent testimony, not only the fact of injury, but that it occurred in connection with the employment of the deceased; and to furnish evidence from which the inference can logically be drawn that the injury arose out of and in the course of the employment." (Internal citations omitted)); *S.C. Second Injury Fund v. Liberty Mut. Ins. Co.*, 353 S.C. 117, 576

S.E.2d 119 (S.C. App. 2003) ("The burden lies with the workers' compensation claimant to demonstrate causation by a preponderance of the evidence."),

f. Therefore, a belief of Defendants formed following a good faith investigation that Claimant had not met his burden of proving compensability is adequate grounds for denial of the claim by the Defendants.

3. § 42-9-260(C) and R.67-504(C) provide a mechanism for a Claimant whose temporary disability benefits have been terminated by action of § 42-9-260(B)(3) to have an Order issued reinstating benefits following a Hearing held pursuant to a request made by Claimant on a Form 15, Section III. Counsel for Claimant stipulated on the record that the sole purpose of the Hearing he had requested was to determine whether Defendants properly stopped benefits under § 42-9-260.
4. Based on the foregoing, I find that Defendants properly stopped benefits under § 42-9-260 on September 12th, 2013. Defendants terminated benefits on the justification that a good faith investigation reveals grounds for the denial of the claim. See Finding of Fact # 8. This is a permissible ground for termination under the statute. See § 42-9-260(B)(3). At the time Defendants terminated Claimant's benefits on September 12th, 2013, Defendants had access to Claimant's medical records by operation of § 42-15-95 and had knowledge of the course of Claimant's treatment through its Nurse Case Manager. See Claimant's APA Submission # 5, p. 17. It is possible for Defendants to have drawn a conclusion in good faith based on Claimant's medical records that he suffered from preexisting medical conditions unrelated to his employment that could be contributing to his current symptoms that would justify denying the claim. See e.g. Claimant's APA Submission #3, p.4 ("Discharge Diagnosis(es) ... 3. Coronary artery disease[,] ... 5. Hypertension[,] 6.

Congestive heart failure."). The fact that there also exists evidence that was available to Defendants that could lead to the conclusion that Claimant's current condition is causally related to a compensable injury by accident does not lead me to conclude that Defendant's termination of benefits was improper. Claimant bears the ultimate burden of proving his claim is compensable and he has requested the Commission provide him an opportunity to do so.

5. Specifically, Claimant has requested a Hearing on the merits of whether Claimant sustained a compensable injury by accident and is entitled to benefits by operation of the Form 50 Employee's Request for Hearing filed on October 21st, 2013. Therefore, the question of whether Claimant sustained a compensable injury by accident and is entitled to benefits under the Act will be decided by the Commission at the Hearing set pursuant to Claimant's Form 50 Request for Hearing.
6. Claimant has availed himself of all relief available under § 42-9-260 and R.67-504 and, therefore, these provisions of the Workers' Compensation Act are no longer in contention in Claimant's claim for benefits against Defendants.

LEGAL ISSUES RAISED BY CLAIMANT-APPELLANT

- I. Did the Hearing Commissioner err as a matter of law by holding that the Defendants do not have the burden of proof to prove that they conducted a good faith investigation allowing them to stop benefits without a hearing any by shifting the burden of proof requiring the Claimant to prove that the Defendants did, "not" conduct a good faith investigation?

- II. The Hearing Commissioner erred as a matter of law by not ordering reinstatement of benefits where the Defendants failed to comply with the mandatory requirements of SC Code §42-9-260.
- III. The Hearing Commissioner abused his discretion by considering the late filed pre-hearing brief and the late filed APA submissions of the defendants.
- IV. The Hearing Commissioner erred by excluding evidence from the Claimant after September 13, 2013.
- V. The Hearing Commissioner erred as a matter of law by making the Finding of Fact #2 that the Claimant suffered a myocardial infarction, "on May 28, 2013".
- VI. The Commissioner erred as a matter of law by making a finding of fact that is not supported by the evidence that an investigation was conducted as found in finding of fact #6 and by making other findings of fact #4 through #9, which are not supported by the testimony, stipulations or documentary evidence submitted in the record.
- VII. The Hearing Commissioner erred as a matter of law in making Finding of Fact No. 9.
- VIII. The Hearing Commissioner erred as a matter of law in making Finding of Fact No. 10.
- IX. The Hearing Commissioner erred as a matter of law in making Finding of Fact No. 11.
- X. The Hearing Commissioner erred as a matter of law by delaying a decision from November 13, 2013 until December 5, 2013.
- XI. The Hearing Commissioner erred as a matter of law by holding a pre-hearing conference for over an hour and making substantive decisions on motions that were not properly noticed and which included the parties' positions on the issues before the Hearing Commissioner.

XII. The Hearing Commissioner erred as a matter of law in his ancillary and interlocutory order concerning motions that has been filed.

EVIDENCE OF THE CASE

Claimant notified Employer he was shocked while working on a rotisserie oven on May 22, 2013. (Def. APA p. 8). Employment records of Claimant indicate that he continued working the remainder of the day and the following day. (Def. APA p. 10-11). An email from Claimant to Employer indicates that he was experiencing only neck pain on May 27, 2013 (5 days post-accident). (Def. APA p. 9). Claimant first presented to Doctor's Care on May 28, 2013 complaining that he woke up sweating (6 days post-accident). (Def. APA p. 1). Doctor's Care noted that he had some tenderness in his shoulder and neck area. *Id.* Further, Doctor's Care noted that Claimant did not complain of any chest pressure. *Id.* Claimant was referred to and saw Dr. Dasgupta at the South Carolina Heart Center. Dr. Dasgupta also noted sweating and noted that Claimant denied chest pain but did have minimal left shoulder pain. (Def. APA p. 2). Dr. Dasgupta diagnosed Claimant with an acute myocardial infarction. *Id.* Dr. Dasgupta indicated that Claimant had a prior history of hypertension, tobacco abuse, as well as a significant family history for heart disease (Claimant's father passed away from coronary disease and myocardial infarction). (Def. APA p. 2-3). Dr. Dasgupta also noted that Claimant appeared to have a ventricular septal defect as a possible completion of his myocardial infarction. (Def. APA p. 2). Dr. Dasgupta referred Claimant to Lexington Medical Center where he underwent surgery to repair an acute ventricular septal defect that formed following the myocardial infarction. (Def. APA p. 5-7).

FULL COMMISSION FINDINGS OF FACT

Based on our consideration of the relevant evidence submitted into the record, excluding all evidence dated after September 13th, 2013, as well as the testimony of the Claimant offered at the Hearing, We AFFIRM AS MODIFIED and make the following findings of fact:

1. Claimant suffered an incident while working on electrical equipment at work that he believed to be an electrical shock on May 22nd, 2013. This is based on the testimony of the Claimant as well as the medical records submitted by the Claimant from Lexington Medical Center.
2. The claimant was admitted to Lexington Medical Center on May 28, 2013 and underwent surgery for a myocardial infarction. This is based on the medical records submitted by the Claimant from Lexington Medical Center.
3. Claimant alleged that he suffered an injury by accident arising out of and in the course and scope of his employment to his heart, left hand/arm/shoulder, neck, head (brain), and chest, and filed a claim for workers' compensation benefits. This is based on the Form 50 Employee's Notice of Claim filed by Claimant on June 6th, 2013.
4. Defendants began providing Claimant with temporary total disability benefits beginning on June 1st, 2013 and continuing through September 14th, 2013. This is based on the Form 19 Status Report and Compensation Receipt filed by Defendants on September 12th, 2013.
5. Defendants also provided Claimant with medical treatment between the alleged date of injury and September 12th, 2013. This is based on the Form 19 Status Report and Compensation Receipt filed by Defendants on September 12th, 2013.

6. Defendants terminated Claimant's workers' compensation benefits 114 days after employer could have had notice of his alleged injury, on September 12th, 2013. The termination was based on a denial of the claim following an investigation. This is based on the Form 15, Section II dated September 12th, 2013.
7. We find that the communications by and through the Claimant's attorney and the Defendants' representatives are sufficient to prove that the medical records were provided to the Defendants prior to September 13, 2013, and provide a basis for the Defendants knowledge and good faith denial.
8. We find that a heart attack and its relationship to a work related injury is a medically complex case.
9. The Form 15, Section II was received by the Commission no later than September 18th, 2013. This is based on the records in the Commission's file and the Form 15, Section III filed by the Claimant.
10. The Form 15, Section II documented that the reason for termination was that the employee fails to meet the burden of a compensable injury under the S.C. Workers' Compensation Act. This is based on the Form 15, Section II dated September 12th, 2013.
11. Claimant received the Form 15, Section II in a timely manner and was able to exercise his rights under § 42-9-260(C) and R.67-504(C). This is based on the Form 15, Section III filed by the Claimant. Claimant alleged that the Form 15, Section II was not served on him properly pursuant to R.67-504(A) because he was only served with one copy of the Form 15, Section II and the documented reason for termination was printed on the Form 15 under Section II, rather than on an attached document. However, Claimant was in no way prejudiced from exercising his rights under the Act by the manner of service of this

is evident by the fact that Claimant filed a Form 15, Section III asserting his rights shortly after receiving the Form 15, Section II. Claimant had the benefit of counsel at the time he was served with the Form 15, Section II, rendering the requirement to provide him with two copies unnecessary. Therefore, Defendants alleged failure to provide Claimant with a second copy of the Form 15, Section II, and including the reasons for denial on the form itself rather than on a separate attachment are not grounds to find the termination of benefits was improper.

12. Claimant did not provide any evidence at the Hearing to indicate that Defendants acted in anything other than good faith during the investigation and eventual denial of the claim. This is based on the evidence (or lack thereof) submitted by the Claimant at the Hearing.
13. We find Claimant's argument that the apparent failure of Defendants to interview Claimant prior to the denial of the claim as evidence of bad faith is unpersuasive. Claimant is alleging a medically complex condition resulting from an injury by accident. Defendants have not denied that Claimant suffered an incident he believed to be an electrical shock on May 22nd, 2013. The causal relation between Claimant's alleged electrical shock and his current medical condition is one that can best be determined by review of the expert medical reports, to which Defendants had access by operation of §42-15-95. Claimant's statement would have been of little value to Defendants in attempting to determine whether his heart condition was causally related to the alleged electrical shock.

FULL COMMISSION CONCLUSIONS OF LAW

Based on the foregoing, we make the following rulings of law:

1. The Workers' Compensation Act provides "[o]nce temporary disability payments are commenced, the payments may be terminated or suspended immediately at any time within the one hundred fifty days if... a good faith investigation by the employer reveals grounds for denial of the claim." § 42-9-260(B)(3).
2. Defendants properly terminated Claimant's workers' compensation benefits on September 12th, 2013 by meeting all the required elements for termination under § 42-9-260(B)(3).
 - a. Benefits were commenced on or about June 1st, 2013. See Finding of Fact No. 4.
 - b. Benefits were terminated on or about September 12th, 2013, well within 150 days after the employer could have received notice of the injury. See Finding of Fact No. 6.
 - c. Defendants represented to the Commission they conducted a good faith investigation of the claim. See Form 15, Section II dated September 12th, 2013.
 - d. Claimant did not provide any evidence that Defendants conducted their investigation in anything other than good faith. See Finding of Fact Nos. 10-11
 - e. Defendants represented the grounds for denial revealed during their investigation was a good faith belief that "Claimant fails to meet the burden of a compensable injury under the SC Workers' Compensation Act". See Form 15, Section II, dated September 12th, 2013. Under the Act, Claimant bears the burden of proving by a preponderance of the evidence that it is more likely than not that Claimant suffered an injury by accident arising out of and in the course of his or her employment resulting in disability. See § 42-1-160; Hall v. Desert Aire, Inc., 376 S.C. 338, 656 S.E.2d 753 (S.C. App. 2009) ("A claimant has the burden of proving facts sufficient to allow recovery under the Workers' Compensation

Act".); Fowler v. Abbott Motor Co., 236 S.C. 226, 113 S.E.2d 737 (1960) ("The burden rests upon claimants to show by competent testimony, not only the fact of injury, but that it occurred in connection with the employment of the deceased; and to furnish evidence from which the inference can logically be drawn that the injury arose out of and in the course of the employment." (Internal citations omitted)); S.C. Second Injury Fund v. Luberty Mut. Ins. Co., 353 S.C. 117, 576 S.E.2d 119 (S.C. App. 2003) ("The burden lies with the workers' compensation claimant to demonstrate causation by a preponderance of the evidence."),

f. Therefore, a belief of Defendants formed following a good faith investigation that Claimant had not met his burden of proving compensability is adequate grounds for denial of the claim by the Defendants.

3. § 42-9-260(C) and R.67-504(C) provide a mechanism for a Claimant whose temporary disability benefits have been terminated by action of § 42-9-260(B)(3) to have an Order issued reinstating benefits following a Hearing held pursuant to a request made by Claimant on a Form 15, Section III. Counsel for Claimant stipulated on the record that the sole purpose of the Hearing he had requested was to determine whether Defendants properly stopped benefits under § 42-9-260.
4. Based on the foregoing, we find that Defendants properly stopped benefits under § 42-9260 on September 12th, 2013. Defendants terminated benefits on the justification that a good faith investigation reveals grounds for the denial of the claim. See Finding of Fact # 8. This is a permissible ground for termination under the statute. See § 42-9-260(B)(3). At the time Defendants terminated Claimant's benefits on September 12th, 2013, Defendants had access to Claimant's medical records by operation of § 42-15-95 and had

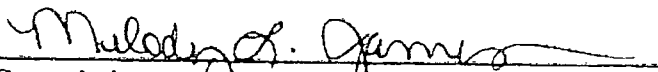
knowledge of the course of Claimant's treatment through its Nurse Case Manager. See Claimant's APA Submission # 5, p. 17. It is possible for Defendants to have drawn a conclusion in good faith based on Claimant's medical records that he suffered from preexisting medical conditions unrelated to his employment that could be contributing to his current symptoms that would justify denying the claim. See e.g. Claimant's APA Submission #3, p.4 ("Discharge Diagnosis(es) ... 3. Coronary artery disease[,] ... 5. Hypertension[,] 6. Congestive heart failure."). The fact that there also exists evidence that was available to Defendants that could lead to the conclusion that Claimant's current condition is causally related to a compensable injury by accident does not lead me to conclude that Defendant's termination of benefits was improper. Claimant bears the ultimate burden of proving his claim is compensable and he has requested the Commission provide him an opportunity to do so.

5. Specifically, Claimant has requested a Hearing on the merits of whether Claimant sustained a compensable injury by accident and is entitled to benefits by operation of the Form 50 Employee's Request for Hearing filed on October 21st, 2013. Therefore, the question of whether Claimant sustained a compensable injury by accident and is entitled to benefits under the Act will be decided by the Commission at the Hearing set pursuant to Claimant's Form 50 Request for Hearing.
6. Claimant has availed himself of all relief available under § 42-9-260 and R.67-504 and, therefore, these provisions of the Workers' Compensation Act are no longer in contention in Claimant's claim for benefits against Defendants.

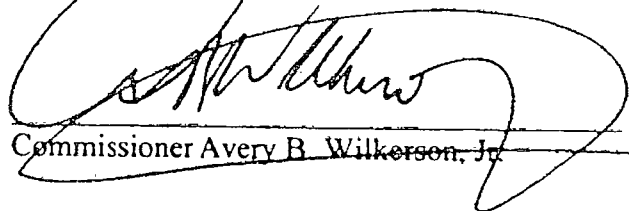
ORDER

IT IS HEREBY ORDERED that the Single Commissioner's Decision and ~~Order~~ is
AFFIRMED AS MODIFIED.

AND IT IS SO ORDERED.


Commissioner Melody James


Commissioner Aisha Taylor


Commissioner Avery B. Wilkerson, Jr.

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the
above entitled action upon all parties to this case by sending an electronic copy hereof by
electronic mail addressed to the attorneys for said parties; or if there is an unrepresented
party(ies), by depositing a copy hereof, postage paid in the United States mail, first class,
addressed to the unrepresented party(ies) and to the attorney(s) for the represented
party(ies).

By Kim Falls on July 25, 2014

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

Proudly representing injured workers
for over 25 years.

Preston F. McDaniel
Justin S. Byars
Matthew Robertson
OF COUNSEL:
Michael Johnson, P.C.

Telephone (803) 771-7211

Facsimile (803) 252-0709

June 6, 2013

Greg Line, Claims Director
SC Workers' Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202

RE: Clarence B. Winfrey v. Archway Service, Inc.
DOA: 05/29/13

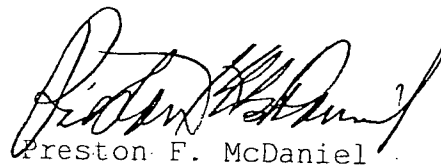
Dear Mr. Line:

Please be advised that I have been retained to represent the Claimant in the above captioned matter as a result of the Claimant's work-related injury. I would appreciate you noting my representation and sending all notices, etc. to my office.

Enclosed also is our Form 50 filing a claim on behalf of the Claimant in this matter along with our proof of service upon the carrier and/or opposing counsel in this matter.

I hope this is sufficient for filing with the Commission.
Should you require anything further, kindly advise.

Sincerely yours,



Preston F. McDaniel

PFM/kth
Enclosures

cc: American Fire & Casualty Co.
Montgomery Insurance
Mr. Clarence B. Winfrey



WCC File #: _____
Case File #: 22209963
Carrier Code #: 00011
Employer FEIN #: _____

Claimant's Name: Clarence B. Winfrey, Jr. SSN: _____ Employer's Name: Archway Service, Inc.
Address: _____ Address: 2316 Kings Road
City: _____ State: SC Zip: 29212 City: Shelby State: NC Zip: 28152
Home Phone: _____ Work Phone: () _____ Insurance Carrier: American Fire & Casualty Co.
Preparer's Name: Preston F. McDaniel Law Firm: McDaniel Law Firm Preparer's Phone #: (803) 771 - 7211

Complete each information blank. To request a hearing, check Box 13b, indicate the kinds of benefits claimed by checking the box(es) at Lines 6, 7, 8, and 9, and file this form in duplicate.

A claim for workers' compensation benefits is made based on the following grounds:

Date of Injury or Illness: 05/29/13

☒ Injury ☐ Illness ☐ Repetitive Trauma

1a. The claimant sustained an injury (Part(s) of Body Injured) On 05/29/13 (Month/Day/Year) in Richland county, state of SC.
1b. Body part(s) affected are: heart, left hand/arm/shoulder, neck, head (brain), chest
Briefly describe how the accident occurred. While working on a rotisserie, Claimant touched a broken wire (480 volts) resulting in a severe electrical shock which entered his left hand and running to his arm, shoulder, neck, heart and chest.

2. Both the claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of injury.

3. The relationship of employer and employee existed at the time of injury.

4. At the time of the injury the claimant was performing services arising out of and in the course of employment.

5. Notice of the accidental injury was given to the Employer on 05/29/13 (Month/Day/Year) in the following manner: Claimant's supervisor, Bobby Ruppe, immediately reported the accident by telephone. (Accepted case).

☒ 6. Due to injury, the claimant is in need of (check one):

☒ (a) medical examination and treatment for: Medical care being provided (Accepted case).

☐ (b) additional medical examination and treatment for: _____

☒ 7. Due to injury, the claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of: 05/29/13 and continuing.

☐ 8. Due to the injury, the Claimant has permanent disability of the following nature and extent (check one):

☐ (1) General Disability:

☐ Total

☐ (2) Specific Disability:

☐ Total

☐ (3) Wage Loss

☐ Partial

☐ Partial

☐ 9. Due to the injury, the Claimant has a serious bodily disfigurement consisting of: Premature

10a. At the time of the injury, the Claimant was paid weekly wages of \$To be Determined, and demands accounting of days worked and wages earned as provided by law.

10b. Give names and addresses of all employers for whom the Claimant has worked since the date of the accident: N/A

11a. Further grounds or unusual aspects of claim: Any and all benefits applicable under the Act.

11b. List names and addresses of all physicians or other medical specialists who have seen or treated the Claimant as a result of the accident: Lexington Medical Center, Doctor's Care, Columbia, SC; Drs. Das, Gupta and Travis, SC Heart, Columbia, SC.

11c. To the best of your knowledge, did you have any prior permanent disability? N/A
If yes, describe: _____

12. Appropriate benefits as provided in the Act for the above grounds and other relief as the Workers' Compensation Commission may direct as just and proper.

☒ 13a. I am filing a claim. I am not requesting a hearing at this time.

☐ 13b. I am requesting a hearing. A \$25 fee is required.

14. Estimated time needed for hearing: _____

I verify the contents of this form are accurate and true to the best of my knowledge.

Preparer's Signature

Claimant's Attorney

Title

mcdaniellaw@hotmail.com

Email

June 6, 2013

Date

Refer to R.67-204 through R.67-210 and R.67-601 through R.67-615. Questions about the use of this form may be directed to the Commission's Claims Department.

WCC Form # 50

Revised 9/07

P.35
50

Employee's Notice of Claim and/or
Request for Hearing

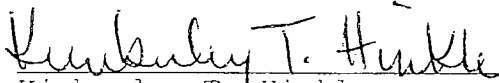
CERTIFICATE OF SERVICE BY MAIL

I hereby certify that I have on this day served the following in the matter of Clarence B. Winfrey, Jr. v. Archway Service, Inc. with a copy of the **FORM 50 FILING A CLAIM** by depositing the same in the United States Mail, with adequate postage thereon, addressed as follows:

American Fire & Casualty Co.
13830 Ballantyne Corp. Place
Suite 300
Charlotte, NC 28277
Attn: Rebecca Evans

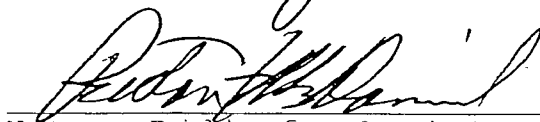
Montgomery Insurance
WC Processing Center
PO Box 515099
Los Angeles, California 90051-5099

I also hereby certify that a regular communication by mail exists.



Kimberley T. Hinkle
Paralegal to Preston F. McDaniel

SWORN TO BEFORE ME this
6 day of June, 2013.



Notary Public for South Carolina (L.S.)
My Commission Expires: 10/28/18



Liberty Mutual Insurance

Workers' Compensation Claims
PO Box 515099
Los Angeles, CA 90051-5099
(866) 539-6449
(877) 840-7788 Fax

September 12, 2013

Clarence Winfrey
C/O McDaniel Law Firm
1315 Elmwood Avenue
Columbia SC 29201

Re: IC # 1306305
Employee: Clarence Winfrey
Employer: Archway Services
D/I: 5/22/2013
Claim# 22209963

Dear Mr. Winfrey:

After additional investigation, we are denying your claim. You have failed to meet the burden of a compensable claim under the SC Workers' Compensation Act.

Sincerely,

Terri Hughes
Sr. Claims Specialist II
800-334-0078 ext 83750

Cc: SCWC
Attorney Rockey Hughly-McAngus Goudelock and Courie

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
(803) 737-5723



WCC File #: 1306305
Carrier File #: 22209963
Carrier Code #: 00475
Employer FEIN #: 510663955

Claimant's Name: Clarence Winfrey SSN: _____ Employer's Name: Archway Services
Address: _____ Address: 2316 Kings Road Extn.
City: _____ State: SC Zip: _____ City: Shelby State: NC Zip: 28152
Home Phone: _____ Work Phone: _____ Insurance Carrier: Liberty Mutual Insurance
Preparer's Name: Terri Hughes Law Firm: _____ Preparer's Phone #: 800 334 0078

Date of injury: 5/22/2013 (m/d/yyyy) Date of Notice to Employer of Injury: 5/22/2013 (m/d/yyyy)

I. **Payment of Temporary Compensation** Check one: ☒ Initial period ☐ Additional period ☐ Corrected compensation rate
(choose A, B, or C)

- ☒ A. Temporary Total at the compensation rate of \$426.69 per week. For this period of disability, disability began on 6/1/2013 (m/d/yyyy) and the date of first payment was 7/11/2013 (m/d/yyyy).
- ☐ B. Temporary Partial at the compensation rate of _____ per week. Note: When the Temporary Partial compensation rate will vary, report the first payment here. Supplement this report throughout the period of Temporary Partial compensation by filing a **Form 15S** with the **Form 18**, which shall be filed six months after the date of injury and each six months thereafter until the file is closed. For this period of disability, disability began on _____ (m/d/yyyy), and the date of first payment was _____ (m/d/yyyy).

Calculation of Temporary Partial Rate:

Average weekly wage before injury

-	Current weekly wage	
=	Difference in wages before injury and now	\$0.00
x	.6667	\$0.00
Temporary Partial Compensation Rate		\$0.00

- ☐ C. Salary in lieu of Temporary ☐ Total ☐ Partial (choose one) compensation in the amount of _____ per week. For this period of disability, disability began on _____ (m/d/yyyy) and the date of first payment of salary in lieu of temporary compensation was _____ (m/d/yyyy).

THIS SECTION MAY BE USED ONLY WITHIN 150 DAYS AFTER NOTICE TO EMPLOYER OF INJURY. ATTACH DOCUMENTATION AS TO THE REASON OF THE TERMINATION.

II. **Termination of Temporary Compensation** Temporary compensation payments were stopped on 9/12/2013 (m/d/yyyy) for the following reason:

- ☐ Claimant has returned to work at least 15 days and no temporary partial compensation is due.
- ☐ Claimant agrees he/she is able to return to work and has signed a **Form 17**.
- ☒ Based on a good faith investigation, the claim is denied. Reason for denial: Employee fails to meet the burden of a compensable injury under the SC Workers' Compensation Act.
- ☐ Claimant has been released to return to work without restrictions and employment has been offered.
- ☐ Claimant has been released to work at limited duty and employer has provided limited duty work consistent with the terms upon which the Employee has been released.
- ☐ Claimant has refused medical treatment, examination, or evaluation. Note: Benefits must be resumed if claimant accepts the treatment, examination, or evaluation. Additional report must be filed if compensation is resumed.

I certify that this form has been served on the claimant per R.67-211.

Terri Hughes
Signature of Claims Administrator

9/12/2013
Date (m/d/yyyy)

III. **Notice to Injured Worker or Legal Representative when Temporary Compensation Has Been Stopped:**

The employer's representative may stop temporary compensation within 150 days of the date of notice of injury for the above reasons. However, if you believe that the temporary compensation should not have been stopped, you may request a hearing by signing below and returning this form to SCWCC Judicial Department at the address at the top of this form. A hearing will be held within 60 days of receipt of your request to determine if temporary compensation has been properly terminated.

MY SIGNATURE BELOW INDICATES THAT I DO NOT AGREE WITH THE TERMINATION OF TEMPORARY COMPENSATION.
I REQUEST A HEARING TO DETERMINE WHETHER I AM ENTITLED TO FURTHER TEMPORARY COMPENSATION PAYMENTS.

Check one: **Form 15(II)** ☐ Has ☐ Has not been received.

Signature of Claimant or Legal Representative

Date (m/d/yyyy)

Employer's representative must complete and file Form 15 with Claims Department within ten days after compensation begins or is terminated. Employer's representative must serve the **Form 15** on the claimant when compensation begins per R.67-211. Employer's representative must prepare and serve **Form 20** within thirty days of beginning compensation per R.67-1603. Employer's representative must serve per R.67-211 two copies of the **Form 15** on claimant immediately on termination of compensation with documentation attached as to the reason for the termination. Injured worker may contest termination of compensation by completing section III of the **Form 15** and filing it with Judicial Department.

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
(803) 737-5723



WCC File #: 1306305
Carrier File #: 22209963
Carrier Code #: 00475
Employer FEIN #: 510663955

Claimant's Name: Clarence Winfrey SSN: _____ Employer's Name: Archway Services
Address: _____ Address: 2316 Kings Road Extn.
City: _____ State: _____ Zip: _____ City: Shelby State: NC Zip: 28152
Home Phone: 803 429 7590 Work Phone: _____ Insurance Carrier: Liberty Mutual Insurance
Preparer's Name: Terri Hughes Law Firm: _____ Preparer's Phone #: 800 334 0078

Compensation Paid:	Number of Weeks	From (m/d/yyyy)	To (m/d/yyyy)	Amount
1. Number of Weeks T.T.	<u>15</u>	<u>6/1/2013</u>	<u>9/14/2013</u>	\$ <u>6,400.35</u>
2. Number of Weeks T.P.	_____	_____	_____	\$ _____
3. Number of Weeks P.P.	_____	_____	_____	\$ _____
4. Disfigurement	_____	_____	_____	\$ _____
5. Agreement and Final Release	_____	_____	_____	\$ _____
Total Compensation Paid				\$ <u>6,400.35</u>
6. Total Medical Benefits* Paid	_____	_____	_____	\$ <u>2,543.47</u>
7. Funeral Benefits	_____	_____	_____	\$ _____

☒ Case Denied

Date of Injury: 5/22/2013

(m/d/yyyy)

By signing this receipt, I acknowledge that I have received the compensation shown above.

By: _____
Claimant

By: Terri Hughes
Employer's Representative

9/12/2013

Date
(m/d/yyyy)

Terri Hughes

Print or type the name of the person, other than the claimant, receiving benefits and sign below.

By: _____

Report of Additional Fees and Recoupment

A. Carrier Reimbursement by Third Party \$ _____

B. Attorney's Fee Paid by Employer \$ _____

C. Attorney's Fee Paid by Claimant \$ _____
(Non-contingent fees only)

File this form with the Claims Department according to R.67-414 and R.67-1204. A person, other than the claimant, receiving benefits should sign on the line provided. * Do not include as medical costs fees paid for expert testimony, fees for determining carrier's liability, costs of autopsy, birth and death certificates and impartial examination. Form 19 must be filed within 16 days of final payment of compensation. Form 19 must be filed when a claim is denied.

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

Proudly representing injured workers
for over 25 years.

Preston F. McDaniel
Justin S. Byars
Matthew Robertson
OF COUNSEL:
Michael Johnson, P.C.

Telephone (803) 771-7211

Facsimile (803) 252-0709

September 18, 2013

VIA EMAIL - terri.hughes@libertymutual.com
AND US MAIL

Ms. Terri Hughes
Senior Claims Specialist II
Montgomery Insurance
13830 Ballantyne Corp. Place
Suite 300
Charlotte, NC 28277

RE: Clarence B. Winfrey v. Archway Service, Inc.
WCC File No. 1306305
Claim #: 22209963

Dear Ms. Hughes:

Please find attached the Form 15 which I am today filing with the Commission by hand delivery. While you note on your letter denying the claim that attorney Rocky Hughey of McAngus, Goudelock & Courie will be representing you, we have checked with the Commission and he is not yet on Record as being your attorney nor have we have been notified as such and so I am therefore returning this Form 15 and serving the Form 15 on you. In addition, I am forwarding a copy to Mr. Rocky Hughey and asking him to confirm whether or not he is in fact representing you on this matter.

Sincerely yours,



Preston F. McDaniel

PFM/kth
Enclosure

cc: Mr. Clarence B. Winfrey
Landon Hughey, Esquire



Claimant's Name: Clarence Winfrey SSN: _____ Employer's Name: Archway Services
Address: _____ Address: 2316 Kings Road Extn.
City: _____ State: _____ Zip: _____ City: Shelby State: NC Zip: 28152
Home Phone: _____ Work Phone: _____ Insurance Carrier: Liberty Mutual Insurance
Preparer's Name: Terri Hughes Law Firm: _____ Preparer's Phone #: 800 334 0078

Date of injury: 5/22/2013 (m/d/yyyy)

Date of Notice to Employer of Injury: 5/22/2013 (m/d/yyyy)

I. **Payment of Temporary Compensation** Check one: ☒ Initial period ☐ Additional period ☐ Corrected compensation rate
(choose A, B, or C)

- ☒ A. Temporary Total at the compensation rate of \$426.69 per week. For this period of disability, disability began on 6/1/2013 (m/d/yyyy) and the date of first payment was 7/11/2013 (m/d/yyyy).
- ☐ B. Temporary Partial at the compensation rate of _____ per week. Note: When the Temporary Partial compensation rate varies, report the first payment here. Supplement this report throughout the period of Temporary Partial compensation by filing a **Form 15S** with the **Form 18**, which shall be filed six months after the date of injury and each six months thereafter until the file is closed. For this period of disability, disability began on _____ (m/d/yyyy), and the date of first payment was _____ (m/d/yyyy).

Calculation of Temporary Partial Rate:

Average weekly wage before injury

-	Current weekly wage	
=	Difference in wages before injury and now	\$0.00
x	.6667	\$0.00
	Temporary Partial Compensation Rate	\$0.00

- ☐ C. Salary in lieu of Temporary ☐ Total ☐ Partial (choose one) compensation in the amount of _____ per week. For this period of disability, disability began on _____ (m/d/yyyy) and the date of first payment of salary in lieu of temporary compensation was _____ (m/d/yyyy).

THIS SECTION MAY BE USED ONLY WITHIN 150 DAYS AFTER NOTICE TO EMPLOYER OF INJURY. ATTACH DOCUMENTATION AS TO THE REASON OF THE TERMINATION.

II. **Termination of Temporary Compensation** Temporary compensation payments were stopped on 9/12/2013 (m/d/yyyy) for the following reason:

- ☐ Claimant has returned to work at least 15 days and no temporary partial compensation is due.
- ☐ Claimant agrees he/she is able to return to work and has signed a **Form 17**.
- ☒ Based on a good faith investigation, the claim is denied. Reason for denial: Employee fails to meet the burden of a compensable injury under the SC Workers' Compensation Act.
- ☐ Claimant has been released to return to work without restrictions and employment has been offered.
- ☐ Claimant has been released to work at limited duty and employer has provided limited duty work consistent with the terms upon which the Employee has been released.
- ☐ Claimant has refused medical treatment, examination, or evaluation. Note: Benefits must be resumed if claimant accepts the treatment, examination, or evaluation. Additional report must be filed if compensation is resumed.

I certify that this form has been served on the claimant per R.67-211.

Terri Hughes
Signature of Claims Administrator

9/12/2013

Date (m/d/yyyy)

III. **Notice to Injured Worker or Legal Representative when Temporary Compensation Has Been Stopped:**

The employer's representative may stop temporary compensation within 150 days of the date of notice of injury for the above reasons. However, if you believe that the temporary compensation should not have been stopped, you may request a hearing by signing below and returning this form to SCWCC Judicial Department at the address at the top of this form. A hearing will be held within 60 days of receipt of your request to determine if temporary compensation has been properly terminated.

MY SIGNATURE BELOW INDICATES THAT I DO NOT AGREE WITH THE TERMINATION OF TEMPORARY COMPENSATION. I REQUEST A HEARING TO DETERMINE WHETHER I AM ENTITLED TO FURTHER TEMPORARY COMPENSATION PAYMENTS.

Check one: ☒ Form 15(II) ☐ Yes ☐ Has not been received.

Robert H. [Signature]
Signature of Claimant or Legal Representative

9/17/13
Date (m/d/yyyy)

Employer's representative must complete and file Form 15 with Claims Department within ten days after compensation begins or is terminated. Employer's representative must serve the **Form 15** on the claimant when compensation begins per R.67-211. Employer's representative must prepare and serve **Form 20** within thirty days of beginning compensation per R.67-1603. Employer's representative must serve per R.67-211 two copies of the **Form 15** on claimant immediately on termination of compensation with documentation attached as to the reason for the termination. Injured worker may contest termination of compensation by completing section III of the **Form 15** and filing it with Judicial Department.

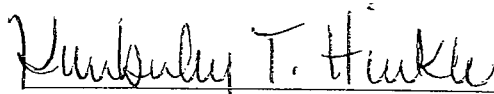
CERTIFICATE OF SERVICE

WCC FILE NO. 1306305

I hereby certify that I have on this day served the following in the matter of Clarence B. Winfrey, Jr. v. Archway Service, Inc. with a copy of the FORM 15 by depositing the same in the United States Mail, with adequate postage thereon, AND VIA Electronic Mail, addressed as follows:

VIA EMAIL - terri.hughes@libertymutual.com
AND US MAIL
Ms. Terri Hughes
Senior Claims Specialist II
Montgomery Insurance
13830 Ballantyne Corp. Place
Suite 300
Charlotte, NC 28277

I also hereby certify that a regular communication by mail exists.



Kimberley T. Hinkle
Paralegal to Preston F. McDaniel

SWORN TO BEFORE ME this
18th day of Sept., 2013.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: 05.12.18

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
803-737-5675



WCC File #: 1306305
Carrier File #: 2228963
Carrier Code #: 00011
Employer FEIN #:

Claimant's Name: Clarence B. Winfrey, Jr. SSN: _____ Employer's Name: Archway Service, Inc.
Address: _____ Address: 2316 Kings Road
City: _____ State: _____ Zip: _____ City: Shelby State: NC Zip: 28152
Home Phone: _____ Work Phone: _____ Insurance Carrier: American Fire & Casualty Co.
Preparer's Name: Preston F. McDaniel Law Firm: McDaniel Law Firm Preparer's Phone #: 803 771 7211

SUBPOENA

To: TERRI HUGHES, SENIOR CLAIMS SPECIALIST II, as Managing Agent for the Insurance Carrier and as a 30(b)(6) Representative of the Insurance Carrier, c/o LANDON HUGHEY, ESQUIRE, ATTORNEY FOR THE DEFENDANTS:

☐ **YOU ARE COMMANDED** to appear before the above-named Commission at the place, date and time specified below to testify in the above case.

PLACE OF TESTIMONY:

ROOM:

DATE AND TIME:

☒ **YOU ARE COMMANDED** to appear at the place, date and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION:

McDaniel Law Firm
1315 Elmwood Avenue
Columbia, SC 29201

DATE AND TIME: October 2, 2013
11:00 o'clock a.m.

☒ **YOU ARE COMMANDED** to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below.

LIST OF DOCUMENTS: See attached.

PLACE:

McDaniel Law Firm
1315 Elmwood Avenue
Columbia, SC 29201

DATE AND TIME: September 30, 2013
10:00 o'clock a.m.

☐ **YOU ARE COMMANDED** to permit inspection of the following premises at the date and time specified below.

PREMISES:

DATE AND TIME:

THIS SUBPOENA SHALL REMAIN IN EFFECT UNTIL YOU ARE GRANTED PERMISSION TO DEPART BY THE COMMISSIONER OR AN OFFICER ACTING ON BEHALF OF THE COMMISSIONER. QUESTIONS CONCERNING THIS SUBPOENA SHOULD BE ADDRESSED TO THE FOLLOWING ISSUING OFFICER.


ISSUING OFFICER'S SIGNATURE AND TITLE

803 771 7211
PHONE NUMBER

9/18/13
DATE

Serve this form according to R.67-212B. Refer to R.67-212 and R.67-214 for additional information. Procedural questions may be addressed to the Judicial Department at 803-737-5765.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
WCC File No. 1306305

CLARENCE B. WINFREY, JR.)

Employee-Claimant,)

v.)

ARCHWAY SERVICE, INC.,)

Employer, and)

AMERICAN FIRE AND
CASUALTY, CO.,)

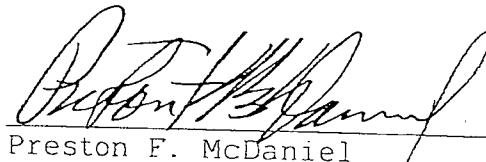
as Carrier,)

Defendants.)

NOTICE OF DEPOSITION OF
TERRI HUGHES

TO: LONDON HUGHEY, ESQUIRE, ATTORNEY FOR THE DEFENDANTS:

YOU WILL PLEASE TAKE NOTICE that at 11:00 o'clock A.M. on the 2ND day of October, 2013, Counsel for the Claimant will take the deposition of Terri Hughes as managing agent of American Fire and Casualty, Co. at McDaniel Law Firm, 1315 Elmwood Avenue, Columbia, South Carolina 29201, upon oral examination before a Notary Public or before some other officer authorized by law to take depositions, said deposition to continue from day to day until completed. You are invited to attend and take part as is fit and proper.

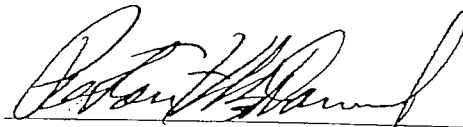


Preston F. McDaniel
MCDANIEL LAW FIRM
1315 Elmwood Avenue
Columbia, South Carolina 29201
(803) 771-7211

September 18, 2013

ATTACHMENT TO SUBPOENA AND SUBPOENA DUCES TECUM FOR TERRI HUGHES
In Re: Clarence B. Winfrey, Jr. v. Archway Service, Inc.
and American Fire and Casualty, Co.
WCC File No.: 1306305

A complete copy of the adjuster's file, any and all files, of which the adjuster has knowledge or to which the adjuster as managing agent has access to, or which is maintained by the insurance carrier and/or maintained by the employer, specifically including all documents alleged to represent a good faith investigation and to include all documents maintained in whatever format or media; including but not limited to written, typed, electronic, recorded and all photographs or recordings (audio or visual).



Preston F. McDaniel

September 18, 2013

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
WCC File No. 1306305

Clarence Winfrey,)
Employee-Claimant,)
v.)
Archway Service, Inc.,)
as Employer, and)
American Fire and)
Casualty, Co.)
as Carrier,)
Respondent-Defendants.)

AFFIDAVIT OF SERVICE

I Kristen Pinkerton having been duly and properly sworn do
depose and state that I have served the NOTICE OF DEPOSITION OF TERRI
HUGHES and SUBPOENA DUCES TECUM in the matter of Clarence B. Winfrey,
Jr. v. Archway Service, Inc.; WCC File No. 1306305 on Landon Hughey as
attorney for the employer and carrier in the above-referenced matter
by delivering and leaving a copy at the office of:

Landon Hughey, Attorney at Law
MCANGUS GOUDELOCK & COURIE, LLC
1320 Main Street, 10th Floor
Columbia, SC 29211

Kristen Pinkerton

SWORN TO BEFORE ME this

18TH day of September, 2013

[Signature] (L.S.)

Notary Public for South Carolina

My Commission Expires: 10/28/18



ATTORNEYS AT LAW

REPLY TO
LONDON HUGHEY
Direct Dial: (803) 227-2261
rhughey@mgclaw.com
COLUMBIA

September 27, 2013

VIA HAND DELIVERY

Virginia Crocker, Judicial Director
S. C. WORKERS' COMPENSATION COMMISSION
1333 Main Street, Suite 500
Columbia, South Carolina 29201

RE: Clarence Winfrey v. Archway Services and American Fire & Casualty Insurance
Company c/o Liberty Mutual Insurance
Date of Accident: May 22, 2013
WCC File No.: 1306305
Our File No.: 2095.13137
Claim No.: 22209963

Dear Ms. Crocker:

Please find enclosed Defendants' Motion to Quash Subpoena of Adjuster for filing in the above-referenced matter. Also enclosed is our check in the amount of \$25.00 for the appropriate filing fee.

By copy of this letter to Preston F. McDaniel, Esquire, the claimant's attorney, we are notifying him of this submission and serving a copy of the same upon him by mail.

Very truly yours,

Landon Hughey

LLH/caj
Enclosures

cc: Preston F. McDaniel, Esquire
Terri Hughes, Liberty Mutual Insurance (via email)
Deonthe McDaniel, Liberty Mutual (via email)
Susan Kizer, Archway Services Inc.

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 1306305

C LARENCE WINFREY,

Employee,

Claimant,

vs.

ARCHWAY SERVICES INC,

Employer,

AND

AMERICAN FIRE & CASUALTY
INSURANCE COMPANY C/O LIBERTY
MUTUAL INSURANCE

Carrier,

Defendants.

**MOTION TO QUASH SUBPOENA
FOR ATTENDANCE AT
DEPOSITION AND PRODUCTION
OF ADJUSTER'S FILE**

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION AND PRESTON
F. MCDANIEL, ESQUIRE:

COMES NOW Terri Hughes, by and through counsel for the Defendants, and files this, her Motion to Quash a Subpoena served on her by Claimant on September 18, 2013 commanding her attendance at a deposition in Columbia, South Carolina on October 2, 2013 and demanding that Ms. Hughes produce her entire claim file for investigation into Defendants' decision to deny compensability of the claim (See Exhibit 1).

In support of her Motion, Ms. Hughes states as follows:

The Claim File

1. Ms. Hughes is an employee of Liberty Mutual Insurance Company.
2. Ms. Hughes is, and has at all times during this pendency of this matter been, a resident of

the State of North Carolina.

3. No courts, tribunals, commissions, and/or officers within the State of South Carolina have authority to issue or enforce a subpoena in the State of North Carolina.
4. No courts, tribunals, commissions, and/or officers within the State of South Carolina have authority to compel compliance with a subpoena served on a North Carolina resident.
5. The information sought to be compelled by the subpoena is protected as privileged attorney-client communication and/or work product.
6. Upon information and belief, the purpose of obtaining these documents is to question, harass, and intimidate Ms. Hughes regarding Defendants decision to deny compensability of the underlying claim following a good faith investigation within 150 days pursuant to S.C. Code Ann. § 42-9-160(B)(3). This issue should be resolved by requesting, and at, a hearing¹.

The Deposition

1. Ms. Hughes is an employee of Liberty Mutual Insurance Company.
2. Ms. Hughes is, and has at all times during this pendency of this matter been, a resident of the State of North Carolina.
3. No courts, tribunals, commissions, and/or officers within the State of South Carolina have authority to issue or enforce a subpoena in the State of North Carolina.
4. No courts, tribunals, commissions, and/or officers within the State of South Carolina have authority to compel compliance with a subpoena served on a North Carolina resident.

¹ Defendants would also point out that Claimant has the burden of proving compensability for his alleged injuries. Defendants do not have the burden of disproving compensability. See Frady v. Pacific Mills 231 S.C. 601, 99 S.E.2d

5. The information sought to be compelled by the subpoena and during the subsequent deposition is protected as privileged attorney-client communication and/or work-product.
6. The information sought to be compelled by the subpoena is totally irrelevant to the underlying proceeding.
7. No circumstances exist demonstrating the relevancy or necessity for the appearance of Ms. Hughes at a deposition.
8. Upon information and belief, the purpose of the deposition is to question Ms. Hughes about Defendants decision to deny compensability of the underlying claim. This issue should be resolved by requesting, and at, a hearing².
9. Additionally, the purpose of Claimant's underlying subpoena for the deposition is to harass and intimidate Ms. Hughes.

S.C. Code § 42-3-140 and 42-3-150 both clearly state that the Commission may cause to be issued subpoenas to take depositions and to compel the attendance of witnesses. However, S.C. Code § 1-23-320(C) states that: “[d]epositions must be taken in accordance with and subject to the same provisions, conditions, and restrictions as apply to the taking of like depositions in civil actions at law in the Court of Common Pleas.”

It is well settled in this State that a subpoena issued to an out-of-state witness is legally ineffective to compel the attendance of such witness at a trial in this State. *See Vaught v. Nationwide Mut. Ins. Co.*, 156 S.E.2d 627, 250 S.C. 65 (S.C. 1967). This concept is further bolstered by the language of SCRCP 45(c)(3)(A)(ii) which states that “...such a person may, in order to attend trial, be commanded to travel from any such place **within the state** in which the

398 (S.C. 1957).

² Defendants would again point out that Claimant has the burden of proving compensability for his alleged injuries. Defendants do not have the burden of disproving compensability. *See Frady v. Pacific Mills* 231 S.C. 601, 99 S.E.2d 398 (S.C. 1957).

trial is held” [emphasis added]. A subpoena issued in this State simply cannot compel an out-of-state witness to do anything.

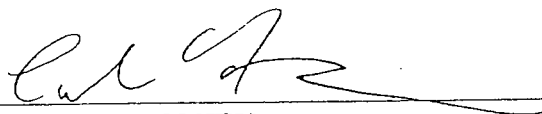
Further, this subpoena was issued in South Carolina commanding a witness located in North Carolina to appear for a deposition in North Carolina. The only connection this subpoena has to South Carolina is its issuance. Any issues regarding enforcement of this subpoena should be resolved by a North Carolina Court. Both South and North Carolina have enacted the Uniform Interstate Depositions and Discovery Act. Claimant should have complied with the existing rules and regulations contained in S.C. Code § 15-47-100 et seq. and served this subpoena pursuant to the Act.

WHEREFORE, Defendants and Terri Hughes respectfully pray that the Commission enter an Order Quashing said Subpoena and that the Commission set for hearing, prior to the issuance of any subsequent subpoena, the issue of whether or not Ms. Hughes can be compelled to appear for a deposition and/or be compelled to produce the entire claims file. Ms. Hughes also requests that this Commission issue a Protective Order pursuant to SCRCP 26(c) ordering that the deposition not be had to protect Ms. Hughes from the annoyance, embarrassment, oppression, and/or undue burden of having her deposition improperly taken and quashing and/or limiting the scope of the subpoena for “a complete copy of the adjuster’s file.”

Finally, Ms. Hughes requests that an award of expenses be granted to Defendants pursuant to SCRCP 37(a)(4)³.

³ “If the motion is granted, the court shall, after opportunity for hearing, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving

Defendants respectfully request that oral arguments on all issues raised in this motion be set before the Jurisdictional Commissioner. Respectfully submitted,



LANDON HUGHEY
MCANGUS GOUDELOCK & COURIE, L.L.C.
Post Office Box 12519, Capitol Station
Meridian, 1320 Main Street, 10th Floor
Columbia, South Carolina 29211-2519
(803) 779-2300
Attorneys for the Employer/Carrier

Columbia, South Carolina
September 27, 2013

party the reasonable expenses incurred in obtaining the order, including attorney's fees..."

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

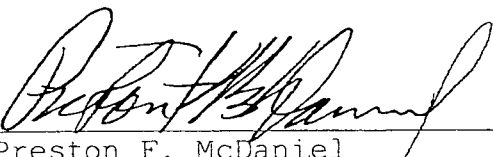
BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
WCC File No. 1306305

CLARENCE B. WINFREY, JR.)
Employee-Claimant,)
v.)
ARCHWAY SERVICE, INC.,)
Employer, and)
AMERICAN FIRE AND)
CASUALTY, CO.,)
as Carrier,)
Defendants.)

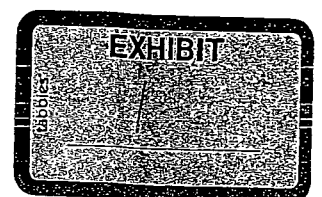
NOTICE OF DEPOSITION OF
TERRI HUGHES

TO: LONDON HUGHEY, ESQUIRE, ATTORNEY FOR THE DEFENDANTS:

YOU WILL PLEASE TAKE NOTICE that at 11:00 o'clock A.M. on the 2ND day of October, 2013, Counsel for the Claimant will take the deposition of Terri Hughes as managing agent of American Fire and Casualty, Co. at McDaniel Law Firm, 1315 Elmwood Avenue, Columbia, South Carolina 29201, upon oral examination before a Notary Public or before some other officer authorized by law to take depositions, said deposition to continue from day to day until completed. You are invited to attend and take part as is fit and proper.


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

September 18, 2013





Claimant's Name: Clarence B. Winfrey, Jr. SSN: 249-17-1579 Employer's Name: Archway Service, Inc.
Address: 153 Artic Court Address: 2316 Kings Road
City: Columbia State: SC Zip: 29212 City: Shelby State: NC Zip: 28152
Home Phone: _____ Work Phone: _____ Insurance Carrier: American Fire & Casualty Co.
Preparer's Name: Preston F. McDaniel Law Firm: McDaniel Law Firm Preparer's Phone #: 803 771 7211

SUBPOENA

To: TERRI HUGHES, SENIOR CLAIMS SPECIALIST II, as Managing Agent for the Insurance Carrier and as a 30(b)(6) Representative of the Insurance Carrier, c/o LONDON HUGHEY, ESQUIRE, ATTORNEY FOR THE DEFENDANTS:

☐ **YOU ARE COMMANDED** to appear before the above-named Commission at the place, date and time specified below to testify in the above case.

PLACE OF TESTIMONY:

ROOM:

DATE AND TIME:

☒ **YOU ARE COMMANDED** to appear at the place, date and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION: McDaniel Law Firm
1315 Elmwood Avenue
Columbia, SC 29201

DATE AND TIME: October 2, 2013
11:00 o'clock a.m.

☒ **YOU ARE COMMANDED** to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below.

LIST OF DOCUMENTS: See attached.

PLACE: McDaniel Law Firm
1315 Elmwood Avenue
Columbia, SC 29201

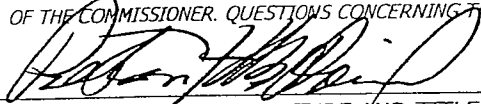
DATE AND TIME: September 30, 2013
10:00 o'clock a.m.

☐ **YOU ARE COMMANDED** to permit inspection of the following premises at the date and time specified below.

PREMISES:

DATE AND TIME:

THIS SUBPOENA SHALL REMAIN IN EFFECT UNTIL YOU ARE GRANTED PERMISSION TO DEPART BY THE COMMISSIONER OR AN OFFICER ACTING ON BEHALF OF THE COMMISSIONER. QUESTIONS CONCERNING THIS SUBPOENA SHOULD BE ADDRESSED TO THE FOLLOWING ISSUING OFFICER.


ISSUING OFFICER'S SIGNATURE AND TITLE

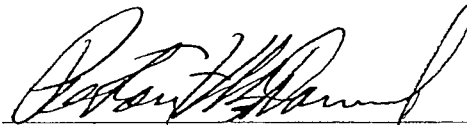
803 771 7211
PHONE NUMBER

9/18/13
DATE

Serve this form according to R.67-212B. Refer to R.67-212 and R.67-214 for additional information. Procedural questions may be addressed to the Judicial Department at 803-737-5765.

ATTACHMENT TO SUBPOENA AND SUBPOENA DUCES TECUM FOR TERRI HUGHES
In Re: Clarence B. Winfrey, Jr. v. Archway Service, Inc.
and American Fire and Casualty, Co.
WCC File No.: 1306305

A complete copy of the adjuster's file, any and all files, of which the adjuster has knowledge or to which the adjuster as managing agent has access to, or which is maintained by the insurance carrier and/or maintained by the employer, specifically including all documents alleged to represent a good faith investigation and to include all documents maintained in whatever format or media, including but not limited to written, typed, electronic, recorded and all photographs or recordings (audio or visual).

A handwritten signature in black ink, appearing to read 'Preston F. McDaniel', written over a horizontal line.

Preston F. McDaniel

September 18, 2013

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 1306305

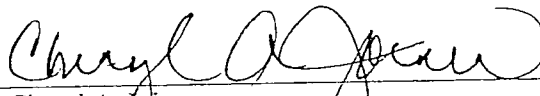
CLARENCE WINFREY,	}	
	}	
Employee,	}	
	}	
Claimant,	}	
	}	
vs.	}	
	}	
ARCHWAY SERVICES INC,	}	
	}	
Employer,	}	
	}	
AND	}	
	}	
AMERICAN FIRE & CASUALTY	}	
INSURANCE COMPANY C/O LIBERTY	}	
MUTUAL INSURANCE,	}	
	}	
Carrier,	}	
	}	
Defendants.	}	

**CERTIFICATE
OF
SERVICE**

The undersigned certifies that she is an employee at MCANGUS GOUDELOCK & COURIE, and that she has served, on the date set forth below, a copy of the document described below, in the above entitled action to the following persons, pursuant to Section 15-9-930 and Section 15-9-940 of the Code of Laws of South Carolina, 1976, by depositing a copy of same in the United States Mail, postage prepaid, addressed to:

TO: Preston F. McDaniel, Esquire
The McDaniel Law Firm
1315 Elmwood Avenue
Columbia, South Carolina 29201

DOCUMENT: Motion to Quash Subpoena of Adjuster
DATE OF Mailing: September 27, 2013


Cheryl A. Joiner
Legal Assistant to Landon Hughey

South Carolina Workers' Compensation Commission

1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
(803) 737-5723



WCC File #: 1306305
Carrier File #: NRCF20130612
September 27, 2013

NOTICE OF HEARING

Clarence Winfrey v. Archway Service, Inc.

Subject: To determine if claimant's temporary compensation was legally terminated.
Date: November 13, 2013 at 01:45 PM
Location: SC Workers' Compensation Commission, 1333 Main Street, Suite 500 Hearing Room B
Columbia, SC 29202

South Carolina Regulations 67-601 through 67-615 govern hearings before the South Carolina Workers' Compensation Commission. The claimant must attend when not represented by an attorney or when disfigurement is involved. Corporations must be represented by an attorney, and uninsured employers must attend.

Attorneys must file a Form 58 with proof of service pursuant to Regulation 67-611. Postponements are only granted pursuant to Regulation 67-613. Please visit www.wcc.sc.gov/Commissioners to view Commissioners' Preferences. If you have questions regarding this matter, please contact the office of the undersigned Jurisdictional Commissioner.

Commissioner T. Scott Beck
803-737-5698, abracy@wcc.sc.gov

CERTIFICATE OF SERVICE – This is to certify the undersigned has served this notice in the above entitled action upon all parties to this cause by sending a copy hereof by electronic mail or United States mail.

By: Amy A. Bracy, SC Workers' Compensation, September 27, 2013

Party

Employee: Clarence Winfrey

Attorney

Preston F. McDaniel
mcdaniellaw@hotmail.com
803-771-7211

Employer: Archway Service, Inc.
Carrier: American Fire & Casualty Co

Landon L. Hughey (5)
lhughey@mgclaw.com
803-779-2300

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

Proudly representing injured workers
for over 25 years

Preston F. McDaniel
Justin S. Byars
Matthew Robertson
OF COUNSEL
Michael Johnson, P.C.

Telephone (803) 771-7211

Facsimile (803) 252-0709

October 7, 2013

Virginia Crocker - Judicial Director
SC Workers Compensation Commission
1333 Main Street
Columbia, South Carolina 29202

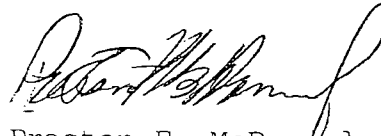
RE: Clarence B. Winfrey v. Archway Service, Inc.
WCC File No. 1306305

Dear Ms. Crocker:

Please find enclosed for filing with the Commission the original and three (3) copies of our **Reply to Motion to Quash** in the above-referenced matter. I am, by copy of this letter, serving opposing counsel with a copy of the same.

I hope this is sufficient for filing with the Commission; however, if additional information is needed, please feel free to contact me at your convenience.

Sincerely yours,



Preston F. McDaniel

PFM/kth
Enclosures

cc: Landon Hughey, Esquire

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
WCC File No. 1306305

CLARENCE B. WINFREY, JR.)
Employee-Claimant,)
v.)
ARCHWAY SERVICE, INC.,)
as Employer, and)
AMERICAN FIRE AND)
CASUALTY COMPANY,)
as Carrier,)
Defendants.)

REPLY TO MOTION TO QUASH

By way of Reply to the Motion to Quash, the Claimant would respectfully show unto the Commission as follows:

1. That the Defendants take the position and argue that the Subpoena should be quashed because it calls for the subpoenaing of what they treat as a non-party "witness" in a case where that witness is out-of-state. The Claimant would completely concur with that position if that was the case in this situation. However, the adjuster was subpoenaed as the, "managing agent" of the insurance company in this case to appear as a party witness.

2. That our law provides in reference to a corporation that any officer or, "managing or general" agent is considered to be and treated as a party to the action. In this case there is nothing in the Defendants' Motion that denies that Ms. Hughes is the managing agent on the claim for the insurance carrier. As such, SC Rules of Civil Procedure (SCRCP), Rule 4(d) concerning personal service, subsection III provides for service of process on a, "managing agent" for a corporation. Further, SCRCP Rule 30 provides for the deposition of a party witness and also for a non-party witness in any case. That Rule goes on to provide that where you are taking the deposition of a witness who is not a party to the action, that the witness is only required to attend a deposition in the county where he or she resides and/or transacts business or where the witness is employed or at such other convenient place as may be ordered by the Court. That limitation does not apply to a party and again Ms. Hughes was being subpoenaed as the managing agent for the insurance carrier.

3. That SCRCP Rule 45 further differentiates between a non-party witness and a party witness (again Ms. Hughes was being subpoenaed as the managing agent for the insurance carrier) and under subsection II, provides and sets out the difference in where the deposition of a party versus a non-party witness may be taken. In reference to a non-party witness the Rule provides that

a Subpoena to a party who is not a party or an officer, director or (and the Claimant would like to emphasize) managing agent of the party commanding attendance at a deposition . . . "shall issue from the court of the county in which the non-party resides or is employed or regularly transacts business. In fact, that same Rule sets out the basis for quashing a Subpoena for a non-party witness and for protection so as to prevent people who are non-parties to the litigation from having to travel more than 50 miles away from where they reside or are employed or regularly transact business. In this case, as to the Deposition Subpoena, again the Claimant would point out that this Subpoena was issued and the adjuster, Ms. Terri Hughes was subpoenaed as the managing agent, a party to the action.

4. That as to the quashing of the Subpoena for the adjuster's file, only that part of the file was subpoenaed that was prior to the time that litigation was instituted and counsel was employed. While Counsel for the Claimant may think the refusal is not based on any viable position under law, this issue has long been since put to rest. Any relevant information or information that may lead to relevant evidence in the investigation and upon which decisions were made in any case for any reason such as accident reports, accident investigation, internal company memos or investigations, witness statements,

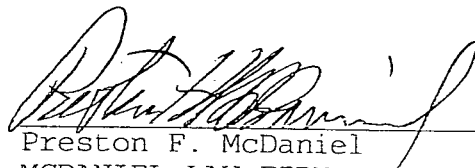
documents between parties prior to the time that litigation was instituted, including all documentary materials are discoverable under SC Law. The seminal case on that issue is SC State Highway Dept. v. Booker, 260 S.C. 245, 195 S.E.2d 615 (1973) which has repeatedly been cited for that black letter principle. Such documentary evidence is not subject to a privilege under the work product Rule and even surveillance video is required to be released. See CEL Products, LLC v. Rozelle, 329 S.C. 105, 495 S.E.2d 213 (SC App 2004) (Judge Connor writing for the Court holding that surveillance video is discoverable); SC State Highway Dept. v. Booker, supra. (Reports and even expert opinions were not privileged information as part of an attorney's work product and were subject to discovery and oral examination at a deposition.)

Wherefore, since both the written records that were subpoenaed are subject to discovery and the adjuster as the managing agent is subject to the deposition, the Motion to Quash should be denied.

Further, since the time has come and gone when this deposition was scheduled and subject to the held without an Order quashing the Subpoena, the Claimant would move for an Order of the Commission ordering the adjuster to appear and show cause as to why she should not be found in contempt for failure to comply

with a written and lawful Subpoena and after review, the Claimant would request sanctions for a frivolous defense including attorney's fees and costs.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Preston F. McDaniel', is written over a horizontal line.

Preston F. McDaniel
MCDANIEL LAW FIRM
1315 Elmwood Avenue
Columbia, SC 29201
(803) 771-7211
Attorney for the Claimant

October 7, 2013

CERTIFICATE OF SERVICE BY MAIL

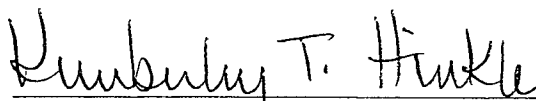
WCC FILE NO. 1306305

I hereby certify that I have on this day served the following in the matter of Clarence B. Winfrey, Jr. v. Archway Service, Inc. with a copy of the **REPLY TO MOTION TO QUASH** by depositing the same in the United States Mail, with adequate postage thereon, addressed as follows:

Virginia L. Crocker, Judicial Director
SC Workers' Compensation Commisison
Post Office Box 1715
Columbia, South Carolina 29202

Landon Hughey, Esquire
McAngus, Goudelock & Courie
Post Office Box 12519
Capitol Station
Columbia, SC 29211-2519

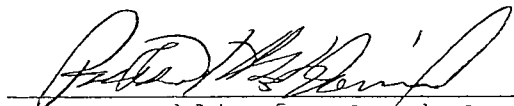
I also hereby certify that a regular communication by mail exists.



Kimberley T. Hinkle
Paralegal to Preston F. McDaniel

SWORN TO BEFORE ME this

7th day of April, 2013.



(L.S.)

Notary Public for South Carolina

My Commission Expires: 12/08/18



ATTORNEYS AT LAW

Reply To

LONDON HUGHEY
Direct Dial: (803) 227-2261
rhughey@mgclaw.com
COLUMBIA

October 11, 2013

Preston F. McDaniel, Esquire
The McDaniel Law Firm
1315 Elmwood Avenue
Columbia, South Carolina 29201

RE: Clarence Winfrey v. Archway Services and American Fire & Casualty Insurance
Company c/o Liberty Mutual Insurance
Date of Accident: May 22, 2013
WCC File No.: 1306305
Our File No.: 2095.13137
Claim No.: 22209963

Dear Mr. McDaniel:

Enclosed is a Subpoena requiring Clarence Winfrey's appearance for a deposition to be taken in the above referenced matter. This deposition is set for **Monday, October 21, 2013 at 10:00AM** at The McDaniel Law Firm, 1315 Elmwood Avenue, Columbia, South Carolina 29201.

If you have any questions, please do not hesitate to call me or my paralegal, Stephanie W. Kluszczynski, at (803) 227-2250.

Very truly yours,

Landon Hughey

LLH/SWK

cc: Susan Kizer, Archway Services Inc
Terri Hughes, Liberty Mutual Insurance (via email & HUB)

P.O. Box 1715 • 1333 Main Street
Columbia, South Carolina 29202-1715
(803) 737-5700

WCC File # 130635

Carrier File # 2220953

Carrier Code # 00475

Employer FEIN 51066355

Clarence Winfrey

Claimant's Name SSN

Address City State Zip

Home Phone # Work Phone #

Landon Hughey

Preparer's Name

Archway Services Inc		
Employer's Name		
2316 Kings Road Ext.		
Shelby, North Carolina 28152		
Address	City	State Zip
American Fire & Casualty Insurance Company c/o		
Liberty Mutual Insurance		
Insurance Carrier		
(803) 227-2261		
Phone Number		

☐ **YOU ARE COMMANDED** to appear before the above named Commission at the place, date and time specified below to testify in the above case.

☒ **YOU ARE COMMANDED** to appear at the place, date and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION: South Carolina 29201 DATE AND TIME: 10/21/13 at 10:00AM

PLACE: _____ DATE AND TIME: _____

PREMISES: _____ DATE AND TIME: _____

 ISSUING OFFICER'S SIGNATURE AND TITLE	Attorney for Defendants (803) 227-2261 PHONE #	October 11, 2013 DATE
--	--	--------------------------

Serve this form according to R.67-212b. Refer to R.67-212 and R.67-214 for additional information. Procedural questions may be addressed to the Judicial Department (803/737-5675).

WCC FORM # 27 REV. DATE 3/96

27

SUBPOENA

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 1306305

CLARENCE WINFREY,

Employee,

Claimant,

vs.

ARCHWAY SERVICES INC,

Employer,

AND

AMERICAN FIRE & CASUALTY
INSURANCE COMPANY C/O LIBERTY
MUTUAL INSURANCE,

Carrier,

Defendants.

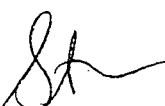
**CERTIFICATE
OF
SERVICE**

The undersigned certifies that she is an employee at MCANGUS GOUDELOCK & COURIE, and that she has served, on the date set forth below, a copy of the document described below, in the above entitled action to the following persons, pursuant to Section 15-9-930 and Section 15-9-940 of the Code of Laws of South Carolina, 1976, by depositing a copy of same in the United States Mail, postage prepaid, addressed to:

TO: Preston F. McDaniel, Esquire
The McDaniel Law Firm
1315 Elmwood Avenue
Columbia, South Carolina 29201

DOCUMENT: Notice of Deposition

DATE OF MAILING: October 11, 2013


Stephanie W. Kluszczynski
Paralegal to Landon Hughey



ATTORNEYS AT LAW

REPLY TO
LONDON HUGHEY
Direct Dial: (803) 227-2261
rhughey@mngclaw.com
COLUMBIA

October 21, 2013

VIA HAND DELIVERY

Commissioner T. Scott Beck
S. C. WORKERS' COMPENSATION COMMISSION
1333 Main Street, Suite 500
Columbia, South Carolina 29201

RE: Clarence Winfrey v. Archway Services and American
Fire & Casualty Insurance Company c/o Liberty Mutual Insurance
Date of Accident: May 22, 2013
WCC File No.: 1306305
Our File No.: 2095.13137
Claim No.: 22209963

Dear Commissioner Beck:

Please find enclosed the original and three (3) copies of Defendant's Motion for Continuance and/or Postponement of a Scheduled Hearing for filing. Also enclosed is our check in the amount of \$25.00 for the appropriate filing fee.

By copy of this letter to Preston F. McDaniel, Esquire, the Claimant's attorney, we are notifying him of this submission and serving a copy of the same upon him by mail.

With kind regards, I am

Very truly yours,


Landon Hughey

LLH/rd

Enc.

cc: Virginia Crocker, Judicial Director (w/enc)(via/hand delivery)
Preston F. McDaniel, Esquire (w/enc)
Terri Hughes, Liberty Mutual Insurance (w/enc)(via/email only)
Liberty Mutual Hub (w/enc)(via/email only)
Susan Kizer, Archway Services Inc. (w/enc)

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 1306305

CLARENCE WINFREY,

Employee,

Claimant,

vs.

ARCHWAY SERVICES INC,

Employer,

AND

AMERICAN FIRE & CASUALTY
INSURANCE COMPANY C/O LIBERTY
MUTUAL INSURANCE,

Carrier,

Defendants.

- CERTIFICATE
OF
SERVICE

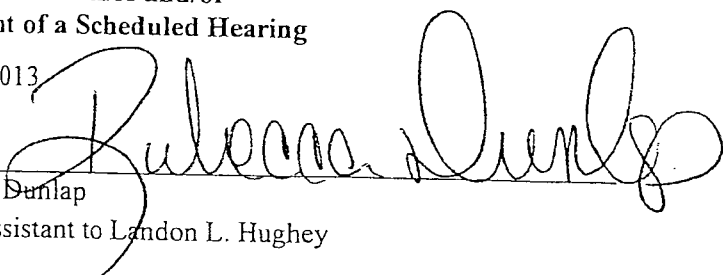
The undersigned certifies that she is an employee at MCANGUS GOUDELOCK & COURIE, and that she has served, on the date set forth below, a copy of the document described below, in the above entitled action to the following persons, pursuant to Section 15-9-930 and Section 15-9-940 of the Code of Laws of South Carolina, 1976, by depositing a copy of same in the United States Mail, postage prepaid, addressed to:

TO: Preston F. McDaniel, Esquire
The McDaniel Law Firm
1315 Elmwood Avenue
Columbia, South Carolina 29201
VIA/HAND DELIVERY

South Carolina Worker's Compensation Commission
1333 Main Street, Suite 500 · Post Office Box 1715
Columbia, South Carolina 29202-1715
VIA/HAND DELIVERY

DOCUMENT: **Motion for Continuance and/or
Postponement of a Scheduled Hearing**

DATE OF
MAILING: October 21, 2013


Rebecca Dunlap
Legal Assistant to Landon L. Hughey

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 1306305

C LARENCE WINFREY,

Employee,

Claimant,

vs.

ARCHWAY SERVICES INC,

Employer,

AND

AMERICAN FIRE & CASUALTY
INSURANCE COMPANY C/O LIBERTY
MUTUAL INSURANCE

Carrier,

Defendants.

**MOTION FOR CONTINUANCE
AND/OR POSTPONEMENT OF A
SCHEDULED HEARING**

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
AND PRESTON F. MCDANIEL, ESQUIRE:

COMES NOW the Defendants, by and through their undersigned attorney, requesting a postponement or continuance of the Hearing scheduled for November 13, 2013. Pursuant to S.C. Code Ann. Reg. 67-613(B)(2), either party may request a postponement of a scheduled Hearing upon written motion and with ten days notice.

A hearing may be postponed by a showing of good cause including, but not limited to, cases where it is premature to hear the case. *See* S.C. Code Ann. Reg. 67-613(B)(1)(e). Further, a hearing may be postponed when additional discovery is necessary. *See* S.C. Code Ann. Reg. 67-613(B)(1)(c). When a hearing is set pursuant to S.C. Code Ann. § 42-9-260, the requirement to hold the hearing within sixty days is waived pursuant to S.C. Code Ann. Reg. 67-613(B)(3).

The hearing will be postponed until the following month. If the commissioner cannot hear the case by the following month, the case will be returned to the Judicial Department for reassignment.

Defendants request a postponement/continuance for the following reasons:

1. Claimant has alleged an injury by accident during the course and scope of his employment due to electrical shock on May 22, 2013.
2. Claimant has alleged injuries to several body parts including his heart.
3. Defendants denied the claim on or about September 16, 2013 following a good faith investigation pursuant to S.C. Code Ann. § 42-9-260(B)(3).
4. Claimant responded to the denial of benefits by filing a Summons and Complaint (*See* Exhibit A, Summons and Complaint with Attachments) on September 27, 2013 in the South Carolina Circuit Court alleging:
 - a. A bad faith denial of benefits;
 - b. That S.C. Code Ann. § 42-9-260 is unconstitutional and requesting a Declaratory Judgment to that effect; and
 - c. Moving for a temporary restraining order to force Defendants to pay benefits outside of the jurisdiction of the South Carolina Workers' Compensation Commission.
5. Claimant improperly sought and obtained a temporary restraining order from Judge Alison Renee Lee on October 1, 2013 ordering Defendants to pay temporary compensation benefits and provide medical care to Claimant. (*See* Exhibit B, Temporary Restraining Order).

6. Defendants filed a Motion to Dismiss and a Brief in Support of the Motion to Dismiss the temporary restraining order and the underlying Summons and Complaint with Judge Lee on or about October 2, 2013. (See Exhibit C, Brief of Defendants).
7. Judge Lee conducted a hearing on the temporary restraining order on October 8, 2013.
8. Judge Lee dismissed the temporary restraining order on October 9, 2013 stating "[t]he Commission has the sole authority to reinstate benefits if appropriate." (See Exhibit D, Judge Lee's Order dated October 9, 2013).
9. Judge Lee did not dismiss the Declaratory Judgment action against Defendants. (See Exhibit D, Judge Lee's Order dated October 9, 2013).
10. Judge Lee explicitly stated that legal challenges to a statute are "...properly raised for the first time...in a declaratory judgment action before the circuit court." (See Exhibit D, Judge Lee's Order dated October 9, 2013).
11. Defendants filed an Answer and Counterclaim with the South Carolina Circuit Court on October 21, 2013. (See Exhibit E, Answer and Counterclaim).
12. Claimant has specifically alleged that "...the provisions of S.C. Code Ann. § 42-9-260...(A) violated the [Claimant's] right to due process of law...(B) that the provisions of §42-9-260 are in direct conflict with provisions of the Administrative Procedures Act concerning notice and hearing...and (C) denies the [Claimant] equal protection of the laws by creating an irrational classification..." (See Exhibit A, Summons and Complaint with Attachments).
13. Claimant has also stated "...pursuant to S.C. Code §42-9-260 the constitutionality of which is the basis of the Declaratory Judgment Relief requested." (See Exhibit A, Summons and Complaint with Attachments).

14. In addition, Claimant presented to the Circuit Court a signed Verification asserting that the allegations and issues raised in the Complaint are true, accurate, and with merit. (See Exhibit A, Summons and Complaint with Attachments).
15. Claimant has also filed a Motion for a New Trial with the South Carolina Circuit Court asking for a "...preliminary or prima facie determination that [S.C. Code Ann. § 42-9-260] is unconstitutional..." (See Exhibit F, Motion for a New Trial dated October 18, 2013).
16. Claimant has simultaneously requested a hearing before this Commission pursuant to S.C. Code Ann. § 42-9-260—the very statute he seeks to invalidate as unconstitutional in the ongoing companion Circuit Court case.
17. It strains belief that on one hand Claimant has argued at length to the Circuit Court that S.C. Code Ann. § 42-9-260 is unconstitutional and on the other hand demands relief from the Commission under the same statute. This inapposite position must be resolved before the Commission can entertain Claimant's allegations related to the workers' compensation claim—including a hearing on the denial of benefits.
18. Further, if the Circuit Court finds S.C. Code Ann. § 42-9-260 unconstitutional—as Claimant demands—the South Carolina Workers' Compensation Commission would have no guidance under the law to conduct a hearing for the suspension or termination of benefits¹.
19. Additionally, if the Circuit Court finds S.C. Code Ann. § 42-9-260 unconstitutional—as Claimant demands—the underlying purpose of the scheduled hearing before the South Carolina Workers' Compensation Commission, specifically to rule on the denial of

¹ Incidentally, Defendants would also have no guidance under the law on how to pay, terminate, and/or suspend benefits.

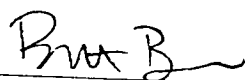
- benefits pursuant to S.C. Code Ann. § 42-9-260, would be rendered unconstitutional.
20. In the interest of judicial economy and to avoid repetitive hearings and/or additional hearings as a result of the companion Circuit Court action filed by Claimant, the South Carolina Workers' Compensation Commission should refrain from conducting any hearings pursuant to S.C. Code Ann. § 42-9-260 in this particular claim until the Circuit Court has had an opportunity to make its ruling on the constitutionality of S.C. Code Ann. § 42-9-260.
21. Defendants contend that the Commission may only conduct the 42-9-260 hearing in this claim once the Circuit Court has ruled on the constitutionality of S.C. Code Ann. § 42-9-260 pursuant to Claimant's demand².
22. Upon information and belief, the Circuit Court will not rule on this issue prior to November 13, 2013.
23. Pursuant to S.C. Code Ann. Reg. 67-613(B)(1)(e), a hearing in this matter pursuant to S.C. Code Ann. § 42-9-260 is premature where the underlying constitutionality issues raised by Claimant and under consideration by the Circuit Court have not yet been adjudicated.
24. Additionally, Defendants have requested a continuance pursuant to S.C. Code Ann. Reg. 67-613(B)(1)(c).
25. Defendants have properly served Claimant with a subpoena for a deposition for October 21, 2013 pursuant to S.C. Code Ann. § 1-23-320 and South Carolina Rule of Civil

² In the event the Commission chooses to go forward with this hearing despite Claimant's contention that the statute authorizing the hearing is unconstitutional, Defendants would request that, should the Commission determine benefits are due, an Order be issued staying payment of benefits until the constitutionality of S.C. Code Ann. § 42-9-260 can be determined by the Circuit Court pursuant to Claimant's suit. As noted in this Motion, if S.C. Code Ann. § 42-9-260 is found to be unconstitutional, Defendants would have no guidance on how to pay, terminate, or suspend benefits.

Procedure 30

26. Claimant, by and through his attorney, has refused to appear for the properly noticed deposition because he "...did not receive the 15 day required notice..." (See Exhibit G, Letter from Preston McDaniel dated October 16, 2013).
27. Defendants have filed a Motion to Compel and for Sanctions on this issue.
28. Upon information and belief, Defendants will not be able to take Claimant's deposition prior to the scheduled hearing.

Therefore, for the foregoing reasons, the November 13, 2013 hearing should be postponed until such time as the Circuit Court can rule on the constitutionality of S.C. Code Ann. § 42-9-260 pursuant to Claimant's demands. Only after the Circuit Court has ruled on the constitutionality of S.C. Code Ann. § 42-9-260—as demanded by Claimant—will this issue be ripe for a 42-9-260 hearing before the Commission. Additionally, the hearing should be postponed because of Claimant's willful refusal to submit to a properly noticed deposition pursuant to S.C. Code Ann. § 1-23-320 and South Carolina Rule of Civil Procedure 30.



LANDON L. HUGHEY
BRETT H. BAYNE
MCANGUS GOUDELOCK & COURIE, L.L.C.
Post Office Box 12519, Capitol Station
Meridian, 1320 Main Street, 10th Floor
Columbia, South Carolina 29211-2519
(803) 779-2300
Attorneys for the Employer/Carrier

Columbia, South Carolina
October 21, 2013

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

CLARENCE B. WINFREY, JR.,

Plaintiff(s)

vs.

AMERICAN FIRE AND CASUALTY CO.,

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

-CP-

2013CP4005888

(Please Print)

Submitted By: Preston F. McDaniel, Esquire

Address: McDaniel Law Firm
1315 Elmwood Avenue
Columbia, SC 29201

SC Bar #: 3770

Telephone #: 803-771-7211

Fax #: 803-252-0709

Other:

E-mail: mcdaniellaw@hotmail.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

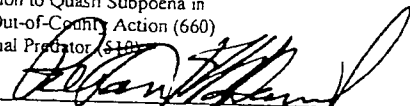
DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.
- ☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- ☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- ☒ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|---|---|--|
| Contracts | Torts - Professional Malpractice | Torts - Personal Injury | Real Property |
| ☐ Constructions (100) | ☐ Dental Malpractice (200) | ☐ Assault/Slander/Libel (300) | ☐ Claim & Delivery (400) |
| ☐ Debt Collection (110) | ☐ Legal Malpractice (210) | ☐ Conversion (310) | ☐ Condemnation (410) |
| ☐ Employment (120) | ☐ Medical Malpractice (220) | ☐ Motor Vehicle Accident (320) | ☐ Foreclosure (420) |
| ☐ General (130) | Previous Notice of Intent Case # | ☐ Premises Liability (330) | ☐ Mechanic's Lien (430) |
| ☐ Breach of Contract (140) | 20 -CP- | ☐ Products Liability (340) | ☐ Partition (440) |
| ☐ Other (199) | ☐ Notice/ File Med Mal (230) | ☐ Personal Injury (350) | ☐ Possession (450) |
| | ☐ Other (299) | ☐ Wrongful Death (360) | ☐ Building Code Violation (460) |
| | | ☐ Other (399) | ☐ Other (499) |
| Inmate Petitions | Judgments/Settlements | Administrative Law/Relief | Appeals |
| ☐ PCR (500) | ☐ Death Settlement (700) | ☐ Reinstate Driver's License (800) | ☐ Arbitration (900) |
| ☐ Mandamus (520) | ☐ Foreign Judgment (710) | ☐ Judicial Review (810) | ☐ Magistrate-Civil (910) |
| ☐ Habeas Corpus (530) | ☐ Magistrate's Judgment (720) | ☐ Relief (820) | ☐ Magistrate-Criminal (920) |
| ☐ Other (599) | ☐ Minor Settlement (730) | ☐ Permanent Injunction (830) | ☐ Municipal (930) |
| | ☐ Transcript Judgment (740) | ☐ Forfeiture-Petition (840) | ☐ Probate Court (940) |
| | ☐ Lis Pendens (750) | ☐ Forfeiture-Consent Order (850) | ☐ SCDOT (950) |
| | ☐ Transfer of Structured Settlement Payment Rights Application (760) | ☐ Other (899) | ☐ Worker's Comp (960) |
| | ☒ Other (799) | | ☐ Zoning Board (970) |
| Special/Complex /Other | Pharmaceuticals (630) | | ☐ Public Service Commission (990) |
| ☐ Environmental (600) | ☐ Unfair Trade Practices (640) | | ☐ Employment Security Comm (991) |
| ☐ Automobile Arb. (610) | ☐ Out-of State Depositions (650) | | ☐ Other (999) |
| ☐ Medical (620) | ☐ Motion to Quash Subpoena in an Out-of-County Action (660) | | |
| ☒ Other (699) | ☐ Sexual Predator (610) | | |

Submitting Party Signature: 

Date: September 27, 2013

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

EXHIBIT

A

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Clarendon, Colleton, Florence, Greenville, Hampton, Horry, Jasper, Lee, Lexington, Pickens (Family Court Only), Richland, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

CLARENCE B. WINFREY, JR.,

Plaintiff,

v.

AMERICAN FIRE AND CASUALTY CO.,

Defendant.

C/A No. _____

SUMMONS

2013 SEP 27 PM 4:03
CLERK OF COURT
C.C.P. & C.S.

IN RE:

South Carolina Workers
Compensation Commission
WCC File No.: 1306305

CLARENCE B. WINFREY, JR.,

Employee-Claimant,

v.

ARCHWAY SERVICE, INC.,

Employer, and

AMERICAN FIRE AND CASUALTY CO.,

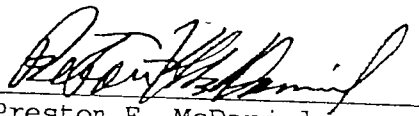
As Carrier,

Defendants.

YOU ARE HEREBY SUMMONED and required to answer the
Complaint in this action, a copy of which is herewith served
upon you, and to serve a copy of your Answer to the Complaint on

the Plaintiff's attorney, Preston F. McDaniel, at his office,
McDaniel Law Firm, 1315 Elmwood Avenue, Columbia, South Carolina
29201, within thirty (30) days after the service hereof,
exclusive of the day of such service, and if you fail to answer
the Complaint within the time aforesaid, the Plaintiff in this
action will apply to the Court for the relief demanded in the
Complaint.

Respectfully submitted,



Preston F. McDaniel
McDANIEL LAW FIRM
1315 Elmwood Avenue
Columbia, SC 29201
(803) 771-7211

Attorney for the Plaintiff

September 27, 2013

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

CLARENCE B. WINFREY, JR.,)
Plaintiff,)
v.)
AMERICAN FIRE AND CASUALTY CO.,)
Defendant.)

C/A No. _____

2013 SEP 27 PM 4:03
JENNIFER B. HARRIS
C.C.H. & G.S.

IN RE:)
South Carolina Workers)
Compensation Commission)
WCC File No.: 1306305)
CLARENCE B. WINFREY, JR.,)
Employee-Claimant,)
v.)
ARCHWAY SERVICE, INC.,)
Employer, and)
AMERICAN FIRE AND CASUALTY CO.,)
As Carrier,)
Defendants.)

COMPLAINT

The Plaintiff, Clarence B. Winfrey, by and through his undersigned attorney, would respectfully show unto the Court as follows:

INTRODUCTION

1. That this action is filed by the Plaintiff under the Declaratory Judgment Statute, S.C. Code §15-53-10, 20, 30, et seq. to determine whether the provisions of S.C. Code §42-9-260 (B) of the S.C. Workers' Compensation Act which provides for the termination or suspension of compensation benefits within one hundred fifty (150) days from the date of the injury without a hearing is unconstitutional and in violation of the Plaintiff's rights to due process of law in violation of The United States Constitution Amendment XIV, §1 and Amendment V, and the S.C. Constitution Article I, §3 and 22, and/or is volative of the provisions of the Administrative Procedures Act, wherein §42-9-260 deprives the Plaintiff of his property interest without providing the Plaintiff with a hearing prior to the termination of said benefits. Thus this denies him his due process rights and equal protection under the law and specifically the right to notice and an opportunity to be heard before a termination of his compensation payments.- Where there is either a deprivation of liberty or a property interest, the individual has a right to a hearing prior to a determination or termination of that property interest.

2. That as a result of his work-related injury which occurred in Richland County on May 22, 2013, which was timely and properly reported to his employer Archway Service, Inc. who

in turn reported the accident to its insurance carrier for workers' compensation purposes, American Fire and Casualty Company (pursuant to S.C. §42-5-210 the insurance carrier is subrogated to all the rights and duties of the employer and may enforce any such rights in its own name), the Defendant in this action, agreed to authorize and started paying benefits including temporary weekly compensation benefits, medical benefits and other benefits as provided under the South Carolina Workers' Compensation Act. (S.C. Code §42-17-10 provides that an agreement to pay compensation has the same effect as on order/award of the Commission.)

3. That after providing benefits to the Plaintiff including Temporary Total Disability compensation, medical care and other benefits under the Act from June 1, 2013 through September, veribly on Friday, September 13, 2013 and by letter received Monday, September 16, 2013, the carrier abruptly and without notice and without a hearing, filed a Form 15 with the South Carolina Workers' Compensation Commission terminating benefits on the basis checked on the form that, "based on a good faith investigation the claim is denied" and stopped all benefits. This action allegedly taken under the provisions of the statute has given rise for this action.

PARTIES

4. That the Plaintiff is a resident of Lexington County, South Carolina.

5. That the Defendant American Fire and Casualty Company is a corporation chartered under the laws of one of the States in the United States and is licensed to do and does insurance business in South Carolina specifically writing workers' compensation policies for employers to cover their employees in the State of South Carolina. As set forth above, the American Fire and Casualty Company is the insurance carrier for the Employer and pursuant to the Act is subrogated to the rights and benefits of the Employer in this Workers' Compensation Act. Their Attorney of Record in the underlying matter giving rise to this action is:

Landon Hughey, Esquire
McAngus, Goudelock & Courie, LLC
1320 Main Street, 10th Floor
Columbia, South Carolina 29201

Copy of the Notification of Representation is attached hereto and incorporated herein by reference as Exhibit "A".

JURISDICTION AND VENUE

6. That as set forth in the Introduction, this matter was brought due to a work-related injury which occurred in Richland County where pursuant to the Workers' Compensation Act and

specifically, S.C. Code §42-17-20, jurisdiction and venue are proper.

DECLARATORY JUDGMENT ACTION
RELIEF SOUGHT

7. That this action is brought under the provisions of the South Carolina Uniform Declaratory Judgment Act, §15-53-10 et seq., South Carolina Code of Laws (1976 as amended) on the basis that a real and actual controversy exists between the parties due to the Defendants stopping benefits under the provisions of S.C. Code §42-9-260 and under S.C. Code §15-53-30 wherein any person whose rights, are affected by a statute may have determined any question of construction or validity (constitutionality) arising under the statute and obtain a declaration of rights thereunder.

8. That the Plaintiff would submit that the provisions of S.C. Code §42-9-260 and specifically subsection (B) (1-6):

(A) violate the Plaintiff's right to due process of law by allowing for a deprivation of his property interest without notice and without a hearing and opportunity to be heard;

(B) that the provisions of §42-9-260 are in direct conflict with the provisions of the Administrative Procedures Act concerning notice and hearing in a contested case; and

(C) denies the Plaintiff equal protection of the laws by creating an irrational classification, i.e., " a legislative

classification which excludes ..., (or treats differently)..., a certain class of persons" ..., which is not, "rationally related to the objective of the statute." The Plaintiff would argue as follows:

A

S.C. CODE §42-9-260 VIOLATES THE FUNDAMENTAL DUE PROCESS RIGHTS OF THE PLAINTIFF UNDER THE UNITED STATES AND SOUTH CAROLINA CONSTITUTIONS.

"In order to be entitled to the procedural safeguards encompassed by the due process clause of the Fourteenth Amendment (notice and an opportunity to be heard) the complaining party must suffer from deprivation of a liberty or property interest."

Board of Regents v. Roth, 408 U.S. 564, 569, 92 S.Ct. 2701, 2705, 33 L.E.2d 548 (1971) (Emphasis added). "Only when such a property interest exists does a constitutional right to a hearing attach." Roth, 408 U.S. at 577, 92 S.Ct. at 2709.

Our Supreme Court has ruled, "workers' compensation benefits constitute a property interest." Last v. MSI Const. Co., Inc., 305 S.C. 349, 409 S.E.2d 334, 336 (1991); Orszula v. Orszula, 292 S.C. 264, 356 S.E. 2d 114 (1987). Therefore, any attempt to deny a Claimant of his "property interest" without a hearing violates the due process clauses of both the United States and South Carolina Constitutions.

In Goldberg v. Kelly, 397 U.S. 254, 90 S.Ct. 1011, 25 L.Ed.2d 287 (1970), the United States Supreme Court held that

procedural due process requires that a pre-termination hearing be held when public assistance payments to welfare recipients are discontinued. Goldberg v. Kelly, 397 U.S. 254, 90 S.Ct. 1011, 25 L.Ed.2d 287 (1970). The Court held that even in that situation, the entitlement to welfare benefits constituted a sufficient property interest that due process requirements attached. The Court in Goldberg struck down a New York statute which allowed the termination of benefits prior to a hearing.

The Court reasoned that,

"The extent to which procedural due process must be afforded the recipient is influenced by the extent to which he may be 'condemned to suffer grievous loss' . . . and depends upon whether recipient's interest in avoiding that loss outweighs the governmental interest in summary adjudication.

* * *

Thus the crucial factor in this context . . . is that termination of aid pending resolution of a controversy over eligibility may deprive an eligible recipient of the very means by which to live while he waits. Since he lacks independent resources, his situation becomes immediately desperate. His need to concentrate upon finding the means for daily subsistence, in turn, adversely affects his ability to seek redress. .
"

* * *

"[f]rom its founding the Nation's basic commitment has been to foster the dignity and well-being of all persons within its borders."
Goldberg, 397 U.S. at 262-263, 264, 265-66, 90 S.Ct. at 1019.

Our Courts have similarly stated that 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 the uncertainties of a trial in a suit for damages, to cast upon the industry in which they are employed a share of the burden resulting from industrial accidents and to prevent the burden of injured employees and their dependents becoming charges on society. Their right to sue to obtain compensation is taken away, and such laws should be construed liberally in favor of the employees and their dependents, in furtherance of the beneficial purposes for which they were enacted. Cokeley v. Robert Lee, Inc., 197 (1941) (Emphasis added).

In Goldberg, the Court stated that public assistance "is not mere charity, but a means to promote the general **welfare**, and secure the Blessings of Liberty to ourselves and our Posterity." Goldberg, 397 U.S. at 266, 90 S.Ct. at 1019 (Emphasis added). The Court continued and stated that "pre-termination evidentiary Hearings are indispensable to that end." Id. Our Supreme Court in the case of Hamm v. Mullin's Lumber Co., 193 S.C. 66, 7 S.E.2d 712 (1940) quoting from the United States Supreme Court decision in Powell v. Alabama, 287 U.S. 45 at p. 68, 53 S.Ct. 55 at p. 64, 77 Law Ed. 158 at p. 170, 84 ALR 527 stated:

"It never has been doubted by this Court or any other so as far as we know, that notice and hearing are preliminary steps essential to the passing of an enforceable judgment and that they together with a legally competent tribunal having jurisdiction of the case, constitute

basic elements of the constitutional requirement of due process of law. The words of Webster so often quoted, that by 'the law of the land' is intended 'a law which hears before it condemns' have been repeated by varying forms of expressions in a multitude of decisions."

In Brown v. S.C. State Bd., of Educ., 301 S.C. 326, 391 S.E.2d 866 (1990), our Court echoed those sentiments and held that "[w]here important decisions turn on questions of fact, due process requires an opportunity to confront and cross-examine adverse witnesses." Brown v. S.C. State Bd. of Educ., 301 S.C. 326, 391 S.E.2d 866, 867 (1990). Therefore, under South Carolina Law, a Claimant, as a matter of fundamental due process, is entitled to a hearing before the termination of his/her disability benefits.

B

THAT S.C. CODE §42-9-260 IS IN DIRECT CONFLICT WITH S.C. CODE §1-23-310(2), AND AS SUCH IS VOID.

Not only does §42-9-260 violate a Claimant's due process rights, it is in-direct conflict with S.C. Code §1-23-310(2), which spells out the administrative procedure for all "contested cases". S.C. Code §1-23-310(2) states that a,

"contested case" means a proceeding, including but not restricted to ratemaking, price fixing, and licensing, in which the legal rights, duties or privileges of a party are required by law to be determined by an agency after an opportunity to be heard. S.C. Code §1-23-310(2) (as amended 1993) (Emphasis added).

Prior to June 18, 1996, a Claimant's temporary benefits could not be terminated until "after an opportunity to be heard". Id. Since then for the first 150 days, a Claimant is forced to seek a hearing long after their benefits have been stopped. Section 1-23-310, of the Administrative Procedures Act which governs the Workers' Compensation Commission, is in direct conflict with §42-9-260. After reading both statutes and reviewing existing case law, there is no way to reconcile §42-9-260's denial of the Plaintiff's property right to temporary compensation without a pre-termination hearing and §1-23-310's requirement of a hearing.

"Where provisions of the APA and the Workers' Compensation Act conflict, **the APA controls.**" Pringle v. Builders Transport, 298 S.C. 494, 381 S.E.2d 731, 732 (1989) (Emphasis added). Section 1-23-310(2) is not alone though; our Supreme Court has held that due process requires a hearing prior to the termination of benefits. "Due process law is that law that hears before it condemns **which proceeds upon inquiry and renders judgment only after a full and complete opportunity to be heard.**" S.C. and G.R. Co. v. American Tel and Tel Co., 65 S.C. 459, 43 S.E. 970 (1903) (Emphasis added). When those fundamental rights are not provided, fundamental due process is not afforded. Stono River Environmental Protection Assn. v.

S.C. Dept. of Health and Environmental Control, 305 S.C. 90, 406 S.E.2d 340 (1991).

C

THAT S.C. CODE §42-9-260 VIOLATES THE SOUTH CAROLINA AND UNITED STATES CONSTITUTIONS BY DENYING A CLAIMANT EQUAL PROTECTION UNDER THE LAW.

"The Constitutional guarantee of equal protection under the law requires that all persons be treated alike under like circumstances and conditions, both in the privileges conferred and in the liabilities imposed." Marley v. Kirby, 271 S.C. 122, 245 S.E.2d 604, 605 (1978). While the General Assembly has "the right to make reasonable classifications of persons and property for public purposes", those classifications must apply "equally to all members of the class" and must not be "arbitrary but [instead] rest upon some reasonable basis." Hunt v. McNair, 255 S.C. 71, 177 S.E.2d 362, 368 (1970) (Emphasis added); Ramey v. Ramey, 273 S.C. 680, 258 S.E.2d 883 (1979).

Section 42-9-260 fails to meet this standard. The statute creates two classes, one class made up of Claimants who have not yet been receiving temporary benefits one hundred and fifty (150) days and those that have been receiving benefits in excess of amount of time whose benefits cannot be stopped until after a hearing and who are entitled to benefits until after a hearing is held and benefits are stopped by Order of the Commission.

This classification serves absolutely no interest, has no rational basis and is purely arbitrary.

The requirement of equal protection is not fulfilled unless the classification rests upon some difference which bears a reasonable and just relation to the legislative purpose sought to be affected. Marley, 245 S.E.2d at 606.

In this case the indiscriminate choice of one hundred and fifty (150) days bears no reasonable and just relation to the legislative purpose of the Workers' Compensation Act, which, as stated earlier is for the "benefit, protection and welfare of working men and their dependents." Cokeley, 14 S.E.2d at 893-94. (Emphasis added).

The South Carolina Supreme Court struck down a similar statute in Ramey v. Ramey, 273 S.C. 680, 258 S.E.2d 883 (1979), which did not allow a passenger in an automobile accident to be compensated for their injuries unless they could show "reckless disregard." In striking down the guest statute, the Court stated that the justifications for passing the statute did not constitute "a rational basis for the differential treatment it spawned." Ramey v. Ramey, 273 S.C. 680, 258 S.E.2d 883, 885 (1979). The Court could find no justification for allowing the driver of a car to recover for their injuries, yet hold the passenger to a higher standard in order to recover.

The same logic as applied in Ramey dictates that §42-9-260 be struck down. There is no justification as to why one

claimant is entitled to have a hearing before his benefits can be ended yet another is not entitled to a hearing solely on the basis of whether they have received benefits for one hundred and fifty (150) days. This classification bears no rational basis to the fundamental intent of the Workers' Compensation Act, which is to protect injured workers and to provide disability compensation until their disability to work has ended. Section 42-9-260 and the one hundred and fifty (150) day classification is arbitrary, and serves as absolutely no rational basis for stopping a claimant's benefits without a hearing.

Therefore, S.C. Code §42-9-260 (as amended 1996) does not provide equal protection under the law to Claimants due to its arbitrary, irrational and discriminatory effect.

9. That as to both the payment of temporary compensation benefits prior to the passage of one hundred fifty (150) days and to the payment of temporary compensation benefits after the one hundred fifty (150) days, S.C. Code §42-17-10 and 20 provide that where an agreement is reached to pay compensation by the parties as in this case which is filed with the Commission to pay compensation benefits that agreement is enforceable the same as any other Order of the Commission and that if subsequent to such agreement there is a disagreement as to the continuation of such benefits, either party may request a hearing. Prior case law has repeatedly held that a hearing is required before such

termination of benefits under that statute Halks v. Rust Engineering Co. 208 SC 39, 36 S.C. 2d 852 (1939); Gold v. Moragne 202 SC 281, 24 SE 2d 491 (1943). The only thing that §42-9-260 (A) adds is that during the first one hundred fifty (150) days of the payment of such compensation benefits, the Defendants do not waive any grounds for good faith denial. Subsection (B) then in violation of due process and in violation of Administrative Procedure Act and in violation of the other provisions of the Act seeks to allow the Defendants to stop payment of benefits before a hearing is held, thus depriving the Plaintiff of his entitlement to benefits under the Act without due process.

WHEREFORE, the Plaintiff would respectfully pray that the Court:

1. After review of the verified Complaint and the Affidavit attached hereto, issue a Temporary Restraining Order Without Notice as provided in SCRCF, Rule 65(b) ordering that the Defendants reinstate benefits until a hearing can be held on the Motion to Issue a Temporary Restraining Order after notice and after hearing on that Motion issue a Temporary Restraining Order to remain in place until such time as a hearing may be held on the Summons and Complaint as to the unconstitutionality of the statute. The Temporary Restraining Order Without Notice and a Temporary Restraining Order are necessary to prevent

irreparable harm to the Claimant who is out of work, disabled and has no visible means of support or income and wherein the failure to provide medical care could result in irreparable harm up to and including the death of the Claimant due to his severe medical condition both of which are set forth in the Affidavit in support of this Complaint as attached hereto.

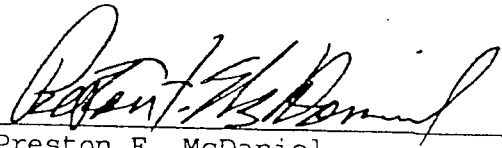
2. Review the provisions of S.C. Code §42-9-260 and specifically those contained in subsection (B) and declare the provisions of subsection (B) unconstitutional and/or in violation of the statutory notice and hearing provisions of the Administrative Procedures Act and the other provisions of the Workers Compensation Act and the Commission Regulations both on the basis of due process and equal protection of the laws as required by both the United States Constitution and our own State Constitution.

3. After making a determination that the statute is unconstitutional and/or in violation of other statutory provisions, issue an Order reinstating benefits and ordering that such benefits may be stopped without a due process hearing giving the Claimant notice as required by law and an opportunity to be heard. Ordering that at such hearing the Defendants have the burden of proof to establish one of the six exceptions as created by §42-9-260 unless the Court determines that such statute is in its entirety unconstitutional and cannot be

separated out to allow for any process to exist under the statute as written.

4. For such other and further relief as the Court may deem just and proper in this situation.

Respectfully submitted,



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

Attorney for Plaintiff

September 27, 2013

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) FOR THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND)

CLARENCE B. WINFREY, JR.,) C/A No. _____

Plaintiff,)

v.)

AMERICAN FIRE AND CASUALTY CO.,)

Defendant.)

IN RE:)

South Carolina Workers)
Compensation Commission)
WCC File No.: 1306305)

CLARENCE B. WINFREY, JR.,)

Employee-Claimant,)

v.)

ARCHWAY SERVICE, INC.,)

Employer, and)

AMERICAN FIRE AND CASUALTY CO.,)

As Carrier,)

Defendants.)

RICHLAND COUNTY
FILED
2013 SEP 27 AM 8:47
JEANETTE W. MCERILE
C.C.P. & G.S.

AFFIDAVIT OF
PRESTON F. MCDANIEL
ATTORNEY FOR THE PLAINTIFF
FILED IN SUPPORT OF
TEMPORARY RESTRAINING ORDER
WITHOUT NOTICE PURSUANT TO
TO SCRPC RULE 65(b)

I, PRESTON F. MCDANIEL, having been duly and properly sworn
do depose and state:

1. That I am the attorney for the Plaintiff who is the Claimant (hereinafter the "Plaintiff") in the workers' compensation claim of Clarence Winfrey vs. Archway Service, Inc. and American Fire and Casualty Co. which gives rise to the Declaratory Judgment action.

2. That the Plaintiff sustained an electrocution injury on May 22, 2013. The Plaintiff obtained counsel and counsel notified the adjuster as managing agent for the Employer's Workers' Compensation Insurance Carrier, American Fire and Casualty, Co., who after review of the file (June 25 email of Rebecca Evans, Adjuster, "I am going to have to review the file before I am able to respond") authorized and started temporary compensation benefits under the Workers' Compensation Act. See Exhibit "A", emails concerning Temporary Total Disability.

3. That thereafter the Plaintiff began receiving weekly compensation benefits in the amount of \$426.69 and continued to receive medical care which had been previously authorized, paid for and provided through Dr. Lide and Dr. Travis and a rehab nurse was assigned for local handling of the claim. On September 13, 2013, Counsel for the Plaintiff was notified by the Plaintiff that his assigned rehab nurse, Ms. Kristy L. Thompson, RN, BA, BSN had been advised to close her file as the case was being denied. Thereafter, on September 16, 2013, by letter dated September 12,

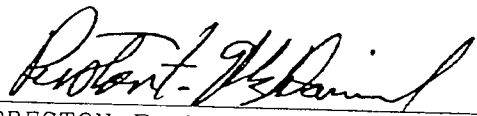
Counsel for the Plaintiff, received a letter and Form 15 stating that the Defendant had stopped temporary compensation benefits and medical care and had denied the claim based on the grounds of, "a good-faith investigation." The letter and the Form 15 are attached hereto and incorporated herein by reference as Exhibit "B".

4. That the Plaintiff is at home recuperating and is totally disabled from gainful employment. His medical situation is extremely tenuous, wherein any slight fluctuation in his physical and/or mental condition (stress) could result in irreparable harm up to and including the death of Plaintiff. A letter from his treating cardiologist as to the serious consequences that can result from the failure to provide medical care has been requested and a copy of the emergency instructions to the Plaintiff from his doctors is attached as Exhibit "C".

5. That to the knowledge of Counsel for the Plaintiff at the time of the filing of this Affidavit in Support of a Temporary Restraining Order Without Notice, the Defendant has stopped compensation to the Plaintiff and that due to his disabled condition he has no alternative economic means of paying his bills and supporting himself other than his temporary compensation. According to the communication from the rehab nurse, she has closed her file at the direction of the adjuster, robbing the

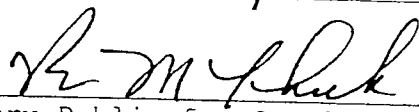
Claimant of all support and assistance in securing medical care and benefits. Also, while to the knowledge of Counsel, the doctors continue to treat the Plaintiff, they are doing so without guarantee of payment on the basis of the denial of the Defendant and necessary medical is being delayed. Therefore, based upon all of the above, Counsel for the Plaintiff variably believes that irreparable harm may come from this denial of benefits without a hearing, which is allowed for pursuant to S.C. Code §42-9-260 the constitutionality of which is the basis of the Declaratory Judgment Relief requested.

FURTHER THE AFFIANT SAYETH NOT.


PRESTON F. MCDANIEL, Affiant

SWORN TO BEFORE ME this

27 day of September, 2013.



Notary Public for South Carolina L.S.

My Commission Expires: 1/21/14

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

VERIFICATION

PRESTON F. McDANIEL, being duly sworn, says that he is the Attorney of Record for the Plaintiff herein, and has read the foregoing COMPLAINT and knows the contents thereof, that the same is true of his own knowledge, except as matters therein stated to be alleged on information and belief; and to those matters he believes them to be true. This Verification is made pursuant to SCRPC Rule 11(c) and the requirements of Rule 65(b).



Preston F. McDaniel
Attorney for the Plaintiff

2013 SEP 27 PM 4:03
FILED
RICHLAND
S.C.

SWORN TO BEFORE ME this
27th day of September, 2013.

Dumbury T. Hinkle (L.S.)
Notary Public for South Carolina

My Commission Expires: 4-26-20

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

Proudly representing injured workers
for over 25 years

Preston F. McDaniel
Justin S. Byars
Matthew Robertson
OF COUNSEL
Michael Johnson, P.C.

Telephone (803) 771-7211

Facsimile (803) 252-0709

October 1, 2013

URGENT!!!
ORDER ENCLOSED!!!!

VIA HAND DELIVERY

Landon L. Hughey, Esquire
McAngus Goudelock & Courie, LLC
1320 Main Street, 10th Floor
Columbia, South Carolina 29211

RE: CLARENCE B. WINFREY, JR. v. ARCHWAY SERVICE, INC.
WCC File No. 1306305

Dear Rocky:

Enclosed please find for service upon you a copy of the
TEMPORARY RETRAINING ORDER ISSUED WITHOUT NOTICE PURSUANT TO
SCRCP RULE 65(b) which has been signed by Judge Lee.

Please confirm that you have contacted your client and
advised your client to reinstate benefits pursuant to the
Circuit Court Order so that on Tuesday, October 9th, 2013 you can
confirm to the Circuit Court compliance with the Order.

Sincerely yours,



Preston F. McDaniel

PFM/kth
Enclosure



STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

) IN THE COURT OF COMMON PLEAS
) FOR THE FIFTH JUDICIAL CIRCUIT
)

CLARENCE B. WINFREY, JR.,

Plaintiff,

v.

AMERICAN FIRE AND CASUALTY CO.,

Defendant.

C/A No. 2013-CP-40-05888

RICHLAND COUNTY
FILED
2013 OCT - 1 AM 11:59
JEANETTE W. McBRIDE
C.C.P. & G.S.

TEMPORARY RESTRAINING
ORDER ISSUED WITHOUT NOTICE
PURSUANT TO SCRCP RULE 65(b)

IN RE:

South Carolina Workers
Compensation Commission
WCC File No.: 1306305

CLARENCE B. WINFREY, JR.,

Employee-Claimant,

v.

ARCHWAY SERVICE, INC.,

Employer, and

AMERICAN FIRE AND CASUALTY CO.,

As Carrier,

Defendants.

This Court has reviewed the Affidavit and the verified
Complaint and finds that the Plaintiff ^{appears to be} totally disabled from
gainful employment at this time due to his injuries and condition

and has no source of income other than his weekly compensation payments. I further find that failure to continue to provide medical care could result in severe immediate and irreparable damage to the physical condition of the Plaintiff due to his severe medical condition up to and including the death of the Plaintiff.

After due and proper consideration of the verified Complaint and the Affidavit attached thereto and incorporated therein by reference, and a after preliminary determination that the stopping of compensation benefits and medical benefits to the Plaintiff places the Plaintiff in danger of immediate and irreparable injury, loss or damage before a hearing can be properly held on a Motion for a Temporary Restraining Order,

IT IS HEREBY ORDERED that the request for a Temporary Restraining Order Without Notice be and hereby is **GRANTED** and that the Defendant American Fire and Casualty Co. by and through its Attorneys and Managing Agent, Ms. Terri Hughes, are hereby ordered to reinstitute and bring current temporary compensation benefits and to provide medical care until such time as a hearing may be held on the Motion requesting a Temporary Restraining Order pursuant to the Motion filed with the Court.

Pursuant to the provisions of Rule 65(b) this Order shall expire ten (10) days from the date and time of issuance. This Order is issued on Tuesday, October 1, 2013 (date) at (hour)

11:45, a. m. o'clock. Upon notice for good cause shown, which shall be include the fact that a hearing cannot be held on the Motion for a Temporary Restraining Order, this Court will entertain an extension for a like period of time unless the Defendant American Fire and Casualty Co., the Defendant in this action, agrees to that this Temporary Restraining Order remains in place until such time as a hearing can be held on the Motion for a Restraining Order, on October 8, 2013 at 9:00 am at the Richland County Courthouse and until further order of this Court.
AND IT IS SO ORDERED.

Phil Arue Lee
PRESIDING JUDGE
Fifth Judicial Circuit

October 1, 2013

Handwritten signature
CERTIFIED TRUE COPY
OF ORIGINAL FILED
JAN 10 2014
RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

CLARENCE B. WINFREY, JR.,)
Plaintiff,)

C/A No: 2013-CP-40-05888

v.)

AMERICAN FIRE AND CASUALTY CO.,)
Defendant.)

DEFENDANTS' BRIEF IN REPLY TO
TEMPORARY RESTRAINING ORDER

RICHLAND COUNTY
FILED
2013 OCT -7 AM 11:14
JEANETTE W. HOSKINS
C.C.P. & G.S.

IN RE:)

South Carolina Workers Compensation
Commission WCC File No: 1306305)

CLARENCE B. WINFREY, JR.)
Employee-Claimant,)

v.)

ARCHWAY SERVICE, INC.,)
Employer, and)

AMERICAN FIRE AND CASUALTY, CO.)

As Carrier,)

Defendants.)

Background

Plaintiff (hereinafter "Claimant") has alleged he sustained an injury by accident to multiple body parts, including his heart, following a work related incident involving electrical shock. It appears from the nature and language of the temporary restraining order served on Defendants that Claimant is attempting to either (1) improperly circumvent the Commission by



asking for a determination of compensability from this court or (2) improperly establish a claim for bad faith denial of benefits by asking this court to order payment of benefits in direct contravention of the South Carolina Workers' Compensation Act.

South Carolina Code Regulations 67-504, 67-505, and 67-606 implement the procedures authorized by S.C. Code Ann. § 42-9-260 regarding the termination and/or suspension of temporary compensation benefits. Regulation 67-504 states that within the first 150 days after the employer receives notice of injury, temporary compensation payments may be suspended or terminated immediately without a prior hearing, and the employee may later request a hearing to have the payments reinstated.

S.C. Code Ann. § 42-9-260(B)(3) provides that following a good faith investigation of the claim, and within 150 days of notice of injury, Defendants may deny compensability of the claim. In the present claim, Defendants conducted a good faith investigation and subsequently denied compensability of the alleged injuries within the 150 day window. As noted above, Defendants' denial is permitted pursuant to S.C. Code Ann. § 42-9-260(B)(3) and Reg. 67-504 which allows a denial of compensability following a good faith investigation. When a claim is denied, a claimant is not entitled to temporary compensation benefits under the Act. The Act provides that if an employer and injured employee fail to reach an agreement in regard to compensation within fourteen days after the employer has knowledge of the injury, then the worker may make application to the Commission for a hearing in regard to the matters at issue and for a ruling thereon. *See* S.C. Code Ann. § 42-17-20. Further, all questions arising under the Act, if not settled by agreement of the parties, shall be determined by the Commission. *See* S.C. Code Ann. § 42-3-180.

Under the Workers' Compensation Act, Claimant has the burden of proving that he sustained an injury by accident and that his injury is compensable. See Fradley v. Pacific Mills 231 S.C. 601, 99 S.E.2d 398 (S.C. 1957). Defendants do not carry the burden of disproving compensability. Claimant's sole method of proving compensability is by filing the proper form with the Commission, requesting a hearing, and conducting a hearing before the Commission. During a hearing, the Commission receives evidence from both parties and makes a determination of compensability.

Legal Argument and Analysis

I. THE OCTOBER 1, 2013 TEMPORARY RESTRAINING ORDER IS VOID BECAUSE THIS COURT DOES NOT HAVE JURISDICTION TO ISSUE A TEMPORARY RESTRAINING ORDER IN A PROCEEDING BEFORE THE WORKERS' COMPENSATION COMMISSION AND ANY OUTSTANDING TEMPORARY RESTRAINING ORDER FROM THIS COURT MUST BE IMMEDIATELY DISSOLVED, TERMINATED, AND/OR RESCINDED

A. **This Court Lacks Original Jurisdiction to Hear This Matter or Issue a Temporary Restraining Order**

Defendants assert that the temporary restraining order is void because this court does not have original jurisdiction over the underlying dispute that gives rise to the request for a temporary restraining order. In circumstances in which the South Carolina Workers' Compensation Act covers an employee's work related injury, the Act provides the exclusive remedy against the employer. Specifically, S.C. Code Ann. § 42-1-540 states:

"The rights and remedies granted by this Title to an employee when he and his employer have accepted the provisions of this Title, respectively, to pay and accept compensation on account of personal injury or death by accident, shall exclude all other rights and remedies of such employee....as against the employer, at common law or otherwise, on account of such injury, loss of service, or death."

(emphasis added).

If the employer has accepted the provisions of the South Carolina Workers' Compensation Act, an employee who has been injured by accident is precluded from suing the employer at common law. If the injury is the result of an "accident" covered under the Act, S.C. Code Ann. § 42-1-540 requires the injured employee to proceed under the Workers' Compensation Act. *See Doe v. South Carolina State Hosp.*, 285 S.C. 183, 190, 328 S.E.2d 652, 658 (Ct. App. 1985). Further, because S.C. Code Ann. § 42-1-540 "...exclude[s] all other rights and remedies of such employee...", the employer is relieved of all state and federal statutory liability for a covered injury¹.

In *Saab v. South Carolina State University*, 350 S.C. 416, 567 S.E.2d 231 (2002), the Supreme Court of South Carolina stated that "...certain cases may be taken from the trial court's original jurisdiction by the General Assembly." In *Saab*, the defendants asserted on appeal that the circuit court did not have subject matter jurisdiction over a tort action arising out of a workers' compensation claim. The Supreme Court found that the circuit court had subject matter jurisdiction but determined that "...the General Assembly has vested the Commission with exclusive original jurisdiction over the type of claims made by Sabb, such that the circuit court was divested of its original jurisdiction over Sabb's claims." *Id.* at 423. The *Sabb* court also noted that "[t]he phrase 'shall exclude all other rights and remedies' in the exclusivity provision demonstrates plain and unambiguous legislative intent to vest the Workers' Compensation Commission with original jurisdiction over an employee's claims..." *Id.* at fn. 3. The Court goes on to say that "...it is apparent the General Assembly intends for employees to seek a remedy from employers for their work-related injury only through the Workers' Compensation

¹ The only exception to this rule has been when an employer or co-employee intentionally injures an employee. *See Dickert v. Metro. Life Ins. Co.*, 311 S.C. 218, 428 S.E.2d 700 (1993); *Peay v. U.S. Silica Co.*, 313 S.C. 91, 437 S.E.2d 64 (1993).

Commission and not through the trial courts. Therefore, the trial court's original jurisdiction over this type of tort claim was divested by the General Assembly's enactment of these statutes..." Id.

In Estate of Covington by Montgomery v. AT&T Nassau Metals Corp., 304 S.C. 436, 405 S.E.2d 393 (1991), the Supreme Court stated that "[t]he Workers' Compensation Act provides an exclusive system of compensation in derogation of common law rights and is not cumulative or supplemental thereto, but wholly substitutional. *Caughman v. Columbia YMCA*, 212 S.C. 337, 47 S.E.2d 788 (1948)." Id. citing to Cook v. Mack's Transfer, 291 S.C. 84, 352 S.E.2d 296 (Ct. App. 1986) cert. denied 292 S.C. 230, 355 S.E.2d 861 (1987). The Court went on to state that "[t]he compensation afforded by the Act is statutory in character, and the right of any claimant thereto is dependent upon the terms and conditions of the statute. *Owens v. Herndon*, 252 S.C. 166, 165 S.E.2d 696 (1969); *Young v. Hyman Motors, Inc.* 199 S.C. 233, 19 S.E.2d 109 (1942). These include the procedures for adjudicating a compensation claim as well as the terms and conditions of substantive entitlement." Id. citing to Cook v. Mack's Transfer 291 S.C. at 87, 352 S.E.2d at 298.

Finally, the TRO was issued pursuant to Rule 65(b), SCRPC. Under Rule 60(b), SCRPC, a judgment or order is void if the court that rendered it lacked jurisdiction over the parties. *See Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, 11 Federal Practice and Procedure* § 2862 (2d ed.1995).

The law in this state is clear that the General Assembly has divested this court of jurisdiction to hear this claim. Original jurisdiction rests with the South Carolina Workers' Compensation Commission and Claimant's sole remedy for recovery of any type is with the Commission. Therefore, the temporary restraining order issued on October 1, 2013 is void and

this court must immediately dissolve, terminate, and/or rescind order related to the issuance of the temporary restraining order.

B. This Court Lacks Subject Matter Jurisdiction to Hear This Matter or Issue a Temporary Restraining Order.

Defendants also assert that the temporary restraining order is void because this court does not have subject matter jurisdiction over the underlying dispute that gives rise to the request for a temporary restraining order. Specifically, this court has no subject matter jurisdiction to make a determination whether Defendants have acted in bad faith. Even if this court were to make that determination in contravention of the established law as set forth below, this court has no authority under the law to order Defendants to pay any compensation benefits for acting in bad faith².

In Cook v. Mack's Transfer, 291 S.C. 84, 352 S.E.2d 296 (Ct. App. 1986) cert. denied 292 S.C. 230, 355 S.E.2d 861 (1987), the court took up the issue whether a worker who sustained an injury under the Workers' Compensation Act may bring a separate action in the courts for damages if the employer and the employer's insurance carrier acted in bad faith in the payment of his claim. The court in Cook held that "such an action may not be maintained." Id. at 86, 352 S.E.2d at 298. The court also found that S.C. Code Ann. § 42-1-540 "bars all actions against an employer where a personal injury to an employee comes within the Act. It makes the Act the exclusive means of settling all such claims." Id. at 87 *citing to Doe v. South Carolina State Hosp.* 285 S.C. 183, 328 S.E.2d 652 (Ct. App. 1985).

As noted above, this claim involved an alleged refusal to pay statutory compensation benefits. The court noted that the Act provides that if an employer and injured employee fail to reach an agreement in regard to compensation within fourteen days after the employer has

² Defendants obviously contend they have made a good faith denial following the allowable good faith investigation.

knowledge of the injury, then the worker may make application to the Commission for a hearing in regard to the matters at issue and for a ruling thereon. *See* S.C. Code Ann. § 42-17-20. Further, the court noted that “the statute further provides that all questions arising under the Act, if not settled by agreement of the parties, shall be determined by the Commission. S.C. Code Ann. § 42-3-180.” *Id.* at 88, 352 S.E.2d at 298-99. The Cook court eventually concluded:

“[s]ince [defendants] allegedly refused to pay Cook’s compensation claim, the Act gave Cook the right to make application to the Commission for benefits. The Act itself provides for speedy adjudication of all controversies over the processing of an injured worker’s claim for benefits. If the dispute concerns an alleged wrongful denial of statutory benefits, the Commission has exclusive jurisdiction to adjudicate the controversy. Whether the denial is willful, in bad faith, negligent, or the result of a good faith difference is immaterial to the question of the Commission’s exclusive jurisdiction. Since a remedy exists under the statute, the injured worker has no right to bring a common law action in the courts...”

Id. (emphasis added).

Further, in Cook, the claimant attempted to argue that his injuries arose not from the workers’ compensation claim but from the refusal of the defendants to pay benefits and that he should have a cause of action under Nichols. The court rejected this claim outright.

Finally, as noted above, the TRO was issued pursuant to Rule 65(b), SCRPC. Under Rule 60(b), SCRPC, a judgment is void if the court that rendered it lacked jurisdiction over the parties. *See* Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, 11 Federal Practice and Procedure § 2862 (2d ed.1995).

Because this dispute concerns an alleged wrongful denial of statutory benefits, as noted above, the Commission has exclusive jurisdiction to adjudicate this controversy. Therefore, this court lacks subject matter jurisdiction to hear this matter and the temporary restraining order

However, for purposes of this section, it is irrelevant whether the denial was in good—or bad—faith.

issued on October 1, 2013 is void and this court must immediately dissolve, terminate, and/or rescind order related to the issuance of the temporary restraining order.

II. THE OCTOBER 1, 2013 TEMPORARY RESTRAINING ORDER IS VOID BECAUSE THE APPLICATION FOR, AND ISSUANCE OF, THE TEMPORARY RESTRAINING ORDER DID NOT COMPLY WITH THE STRICT MANDATORY LANGUAGE OF SOUTH CAROLINA RULE OF CIVIL PROCEDURE 65 AND ANY OUTSTANDING TEMPORARY RESTRAINING ORDER FROM THIS COURT MUST BE IMMEDIATELY DISSOLVED, TERMINATED, AND/OR RESCINDED³

A. Claimant Failed to File and/or Serve a Summons and Complaint with the Temporary Restraining Order

The South Carolina Rules of Civil Procedure unequivocally requires that “[e]very temporary restraining order granted without notice shall be endorsed with the date and hour of issuance; shall be filed forthwith in the clerk’s office and entered of record; shall be served, together with a summons and complaint in the event no summons and complaint have previously been served in the action, upon the adverse party in accordance with the provisions of Rule 4; shall define the injury and state why it is irreparable and why the order was granted without notice; and shall expire by its terms within such time after entry, not to exceed 10 days...” See Rule 65(b), SCRCF (emphasis added).

Claimant has not filed a summons and complaint with this court and/or has failed to properly serve a summons and complaint with the temporary restraining order. Therefore, pursuant to Rule 65(b), the temporary restraining order is void because Claimant did not comply with the mandatory “shall” language contained within the Rule. For that reason, this court should immediately dissolve, terminate, and/or rescind the temporary restraining order.

³ All remaining legal arguments and analysis with the exception of the Request for Sanctions are assuming *arguendo* that this court determines it has jurisdiction over this matter.

B. Claimant Failed to Give, and This Court Failed to Require, the Giving of Security by the Applicant Prior to the Issuance of the Temporary Restraining Order

The South Carolina Rules of Civil Procedure unequivocally requires that "...no restraining order or temporary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained." Rule 65(c), SCRCP (emphasis added).

In Atwood Agency v. Black, 374 S.C. 68, 646 S.E.2d 882 (2007), the Supreme Court held even a nominal bond does not satisfy Rule 65(c). The court found the nominal amount was improper " because it erroneously assume[d] the injunction [was] proper instead of providing an amount sufficient to protect appellants in the event the injunction [was] ultimately deemed improper." Id. at 73, 646 S.E.2d at 884. The court remanded the case to the trial court to award the appropriate amount of costs and damages incurred as a result of the temporary injunction. *See also* 12 S.C. Jur. Equity § 19 (1992) ("Rule 65(c) of the South Carolina Rules of Civil Procedure requires that security be posted before the court may issue ... a temporary injunction.").

Claimant has not provided security to this court in an amount sufficient to cover Defendants costs and damages that will be incurred with the attempted enforcement of this temporary restraining order. Therefore, pursuant to Rule 65(c), the temporary restraining order is void because Claimant did not comply with the mandatory "shall" language contained within the Rule. For that reason, this court should immediately dissolve, terminate, and/or rescind the temporary restraining order.

C. The Temporary Restraining Order Fails to Conform to the Proper Scope of a Restraining Order

The South Carolina Rules of Civil Procedure state that the form and scope of an injunction or restraining order "...shall describe in reasonable detail...the act or acts sought to be restrained..." Rule 65(d), SCRPC (emphasis added). Black's Law Dictionary defines 'restrain' as to "limit, confine, abridge, narrow down, or restrict⁴." No part of the temporary restraining order conforms to this requirement of describing what act or acts shall be *restrained*. In fact, the only act described in the temporary restraining order is a command to take an affirmative action to pay compensation. Under the plain reading of Rule 65(d), this is improper and falls outside of the proper scope of a temporary restraining order. Therefore, pursuant to Rule 65(d), the temporary restraining order is void because it does not comply with the scope requirement language contained within the Rule. For that reason, this court should immediately dissolve, terminate, and/or rescind the temporary restraining order.

Conclusion

For all of the foregoing reasons, the October 1, 2013 temporary restraining order is void and should be dissolved, terminated, or otherwise rescinded. In addition, Defendants have incurred substantial costs associated with responding to this matter. Defendants should be reimbursed for all costs associated with the receipt, reply, and defense of this action before this court. Pursuant to Rule 11, SCRPC and S.C. Code Ann. § 15-36-10, this court should award Defendants an amount equal to all costs and fees associated with defending this action.

[Attorney Signature on Next Page]

⁴ Black's Law Dictionary Free, 2nd Ed.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

CLARENCE WINFREY,

Claimant,

v.

ARCHWAY SERVICES INC,

Employer,

and

AMERICAN FIRE & CASUALTY
INSURANCE COMPANY C/O LIBERTY
MUTUAL INSURANCE,

Carrier,

Civil Action No. 2013-CP-40-05888

CERTIFICATE OF SERVICE

RICHLAND COUNTY
FILED
2013 OCT -7 AM 11:48
JEANE E. W. McBRIDE
C.C.P. & G.S.

Defendants.

I hereby certify that I have this 5 day of October, 2013 served a copy of the foregoing Brief in Reply to Temporary Restraining Order, on behalf of Employer/Carrier, by mailing copies of same, postage prepaid, in the United States mail, with sufficient postage affixed as follows:

TO: Preston F. McDaniel, Esquire
The McDaniel Law Firm
1315 Elmwood Avenue
Columbia, South Carolina 29201

South Carolina Worker's Compensation Commission
1333 Main Street, Suite 500 · Post Office Box 1715
Columbia, South Carolina 29202-1715
VIA HAND DELIVERY

Rebecca Dunlap

Legal Assistant to Landon L. Hughey

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Clarence Winfrey,

Plaintiff,

vs.

Archway Services, Inc.,

Employer,

and

American Fire & Casualty Insurance
Company c/o Liberty Mutual Insurance,

Carrier,
Defendants.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

CASE NO. 2013-CP-40-05888

ORDER

RICHLAND COUNTY
FILED
2013 OCT 10 AM 11:02
JEANETTE M. HARRISON
C.C.P. & G.C.

This matter came before the Court for a hearing on a Temporary Restraining Order issued without notice pursuant to Rule 65(b), SCRCF. Plaintiff filed a Summons and Complaint seeking a declaratory judgment on September 27, 2013. Plaintiff also filed for a temporary restraining order without notice on this date. This Court issued the temporary restraining order without notice on October 1, 2013. Defendants filed a Motion to Dismiss the temporary restraining order pursuant to Rule 12, SCRCF, on or about October 2, 2013.

The hearing on the temporary restraining order and Defendants' Motion to Dismiss was held on October 8, 2013. Plaintiff was represented by Preston McDaniel, Esquire, and Defendants were represented by Brett H. Bayne, Esquire.

FACTS

Plaintiff alleges his injuries arose from an electrocution accident on May 22, 2013. Plaintiff began receiving temporary compensation benefits and medical benefits as provided by the South Carolina Workers' Compensation Act on July 11, 2013. On September 16, 2013, Plaintiff received a letter stating that Defendants had stopped temporary compensation benefits and medical benefits and denied Plaintiff's claim following a good-faith investigation pursuant to S.C. Code Ann. § 42-9-260. Plaintiff filed for a temporary restraining order to reinstate the



temporary compensation benefits and an action for a declaratory judgment that Section 42-9-260 is facially unconstitutional.

ANALYSIS

Plaintiff argues that this Court should make a declaratory judgment that Section 42-9-260(B) is facially unconstitutional because it deprives Plaintiff of his benefits, a property interest, without a prior hearing in violation of his due process rights. Plaintiff seeks a corresponding temporary restraining order to reinstate the benefits until the issue of the constitutionality of the statute can be determined.

Defendants move for the temporary restraining order and declaratory judgment to be dismissed because this Court does not have subject matter jurisdiction over the matter pursuant to S.C. Code Ann. § 42-1-540, as the Workers' Compensation Commission has exclusive original jurisdiction over claims related to remedies against the employer. Additionally, Defendants argue the scope of the temporary restraining order is improper pursuant to Rule 65(d), SCRPC, in that it is not seeking to restrain activity.

This Court agrees that the temporary restraining order should be dismissed. The temporary restraining order requires this Court to take an affirmative action of ordering *reinstatement* of the benefits, rather than restraining any behavior, as Rule 65(d), SCRPC, requires. Additionally, a hearing before the Workers' Compensation Commission pursuant to Section 42-9-260 has been scheduled for November 13, 2013 to determine if the benefits should be reinstated. The Commission has the sole authority to reinstate benefits if appropriate. Because Plaintiff already has a mechanism for a remedy with the Workers' Compensation Commission, who has exclusive original subject matter jurisdiction over relief for work-related injuries, this Court must defer to their authority on the issue of reinstating the benefits.

However, regarding the declaratory judgment action, this Court does have jurisdiction over the issue of whether Section 42-9-260 is facially unconstitutional. The Supreme Court stated in *Travelscape, LLC v. S.C. Dep't of Revenue*, 391 S.C. 89, 705 S.E.2d 28 (2011), that the Administrative Law Court is unable to decide facial challenges to a statute. Instead, such challenges are "legal questions that are properly raised for the first time on appeal **or in a declaratory judgment action before the circuit court.**" *Travelscape*, 391 S.C. at 109, 705 S.E.2d at 39 (emphasis added). Clearly the circuit court has original subject matter jurisdiction

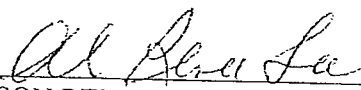
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over declaring a statute unconstitutional, even if the statute relates to an administrative agency. Therefore, this Court is not inclined to dismiss Plaintiff's declaratory judgment action.

ORDER

Based upon the foregoing, **IT IS HEREBY ORDERED** that the temporary restraining order is **DISMISSED**. Defendants' motion to dismiss the declaratory judgment is **DENIED**.

AND IT IS SO ORDERED.



ALISON RENEE LEE
Presiding Judge

Columbia, South Carolina
October 9, 2013

anf
#3

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

CLARENCE WINFREY,

Claimant/Plaintiff,

Civil Action No. 2013-CP-40-05888

v.

ANSWER AND COUNTERCLAIM

ARCHWAY SERVICES INC,

Employer,

and

AMERICAN FIRE & CASUALTY
INSURANCE COMPANY C/O LIBERTY
MUTUAL INSURANCE,

Carrier,

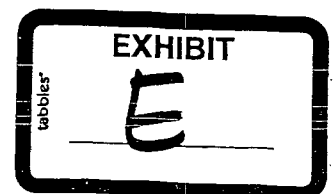
RICHLAND COUNTY
FILED
2013 OCT 21 PM 12:45
JEANETTE W. MCBRIDE
C.C.P. & G.S.

Of Whom Only American Fire & Casualty
Insurance Company is a

Defendant.

COMES NOW Defendant American Fire & Casualty Insurance Company and for its
Answer to Plaintiff's Complaint states the following:

1. Each and every allegation not specifically admitted to in this Answer and Counterclaim is
DENIED.
2. Paragraph 1 does not require a response. However, as laid out below, Defendant asserts
that Plaintiff does not have a property interest and/or property right in *temporary*
workers' compensation benefits.



3. The allegations contained in Paragraph 2 are denied. In addition to the general denial of Paragraph 2, it is denied that Defendant American Fire & Casualty Insurance Company is a proper party to this action.
4. The allegations related to the sequence of events contained in Paragraph 3 are admitted. The reasoning for filing the Complaint does not require a response.
5. The allegations contained in Paragraph 4 are denied for lack of knowledge.
6. The allegations contained in Paragraph 5 are denied. Defendant American Fire & Casualty Insurance Company is not the proper party to this action. Insofar as Paragraph 5 states that Defendant American Fire & Casualty Insurance Company is the insurance carrier for Employer and Landon Hughey is the attorney of record, Paragraph 5 is admitted.
7. The allegations contained in Paragraph 6 are denied.
8. The allegations contained in Paragraph 7 are denied.
9. The allegations contained in Paragraph 8 do not require a response. However, Defendant asserts that S.C. Code Ann. § 42-9-260(B) is constitutional. Further Defendant asserts that Plaintiff does not have a property interest in temporary disability benefits, that S.C. Code Ann. § 42-9-260 is not in conflict with the Administrative Procedures Act, and that Plaintiff has not been denied equal protection of the law.
10. The allegations contained in Section A¹ are denied in that S.C. Code Ann. § 42-9-260 does not violate the fundamental due process rights of the Plaintiff under the United States and/or South Carolina Constitutions.

¹ Plaintiff stopped numbering paragraphs at section A and the remainder of this Answer will refer to the sections of the Complaint.

11. Further, the allegations contained in Section A² are denied in that Plaintiff does not have a property interest in temporary disability benefits.
12. The allegations contained in Section B are denied in that S.C. Code Ann. § 42-9-260 is not in direct conflict with S.C. Code § 1-23-310(2).
13. The allegations contained in Section C are denied in that S.C. Code Ann. § 42-9-260 does not violate Plaintiff's right to equal protection under the United States and/or South Carolina Constitutions.

FIRST DEFENSE

14. Plaintiff fails to state a claim upon which relief can be granted pursuant to Rule 12(b)(6).
15. Specifically, Plaintiff asks this court to issue an Order reinstating workers' compensation benefits in the event it finds S.C. Code Ann. § 42-9-260 unconstitutional.
16. Even if this court were to determine that S.C. Code Ann. § 42-9-260 is unconstitutional, this court does not have jurisdiction to order Defendant to reinstate workers' compensation benefits as the Workers' Compensation Commission has sole, original, exclusive, and subject matter jurisdiction over the payment of workers' compensation benefits.
17. Therefore, Plaintiff fails to state a claim upon which relief can be granted by this court.

SECOND DEFENSE

18. This court lacks subject matter jurisdiction over Plaintiff's claims pursuant to Rule 12(b)(1).

THIRD DEFENSE

19. Plaintiff failed to properly serve Defendant pursuant to Rule 12(b)(5).

² Plaintiff stopped numbering paragraphs at section A and the remainder of this Answer will refer to the sections of the Complaint.

FOURTH DEFENSE

20. There is another action pending between the parties for the same claim pursuant to Rule 12(b)(8).

FIFTH DEFENSE

21. Plaintiff has failed to join a necessary party pursuant to Rule 12(b)(7) and Rule 19.

SIXTH DEFENSE

22. Defendant is not the proper party to this matter as this court cannot grant any relief against Defendant in favor of Plaintiff.

SEVENTH DEFENSE

23. This court lacks original jurisdiction over Plaintiff's claims pursuant to Cook v. Mack's Transfer and Storage, 291 S.C. 84, 352 S.E.2d 296 (Ct. App. 1986) cert. denied 292 S.C. 230, 355 S.E.2d 861 (1987).

EIGHTH DEFENSE

24. Plaintiff does not have a property interest in temporary disability benefits.

25. Plaintiff asserts that to deny benefits without a hearing constitutes a violation of a property interest and therefore the ability to deny benefits without a hearing is unconstitutional.

26. Plaintiff cites two cases in support of his contention: (1) Last v. MSI Const. Co., Inc., 305 S.C. 349, 409 S.E.2d 334 (S.C. 1991) and (2) Orszula v. Orszula, 292 S.C. 264, 356 S.E.2d 114 (S.C. 1987).

27. Neither of these cases supports the contention of Plaintiff that *temporary* disability benefits constitute a property interest.

NINTH DEFENSE

28. Defendant reserves the right to add additional defenses, including additional affirmative defenses, as discovery progresses.

COUNTERCLAIM

29. Plaintiff has alleged he sustained an injury by accident to multiple body parts, including his heart, following a work related incident involving electrical shock.

30. Plaintiff has filed a Complaint attempting to either (1) improperly circumvent the Commission by asking for a determination of compensability from this court or (2) improperly establish a claim for bad faith denial of benefits by asking this court to order payment of benefits in direct contravention of the South Carolina Workers' Compensation Act.

31. South Carolina Code Regulations 67-504, 67-505, and 67-606 implement the procedures authorized by S.C. Code Ann. § 42-9-260 regarding the termination and/or suspension of temporary compensation benefits.

32. Regulation 67-504 states that within the first 150 days after the employer receives notice of injury, temporary compensation payments may be suspended or terminated immediately without a prior hearing, and the employee may later request a hearing to have the payments reinstated.

33. S.C. Code Ann. § 42-9-260(B)(3) provides that following a good faith investigation of the claim, and within 150 days of notice of injury, Defendant may deny compensability of the claim.

34. In the present claim, Defendant conducted a good faith investigation and subsequently denied compensability of the alleged injuries within the 150 day window.

35. Defendant's denial is permitted pursuant to S.C. Code Ann. § 42-9-260(B)(3) and Reg. 67-504 which allows a denial of compensability following a good faith investigation.
36. When a claim is denied, a claimant is not entitled to temporary compensation benefits under the Act.
37. The Act provides that if an employer and injured employee fail to reach an agreement in regard to compensation within fourteen days after the employer has knowledge of the injury, then the worker may make application to the Commission for a hearing in regard to the matters at issue and for a ruling thereon. *See* S.C. Code Ann. § 42-17-20.
38. Further, all questions arising under the Act, if not settled by agreement of the parties, shall be determined by the Commission. *See* S.C. Code Ann. § 42-3-180.
39. Under the Workers' Compensation Act, Claimant has the burden of proving that he sustained an injury by accident and that his injury is compensable. *See Frady v. Pacific Mills* 231 S.C. 601, 99 S.E.2d 398 (S.C. 1957).
40. Defendant does not carry the burden of disproving compensability.
41. Claimant's sole method of proving compensability is by filing the proper form with the Commission, requesting a hearing, and conducting a hearing before the Commission.
42. During a hearing, the Commission receives evidence from both parties and makes a determination of compensability.

FIRST COUNTERCLAIM

Defendant is entitled to an award of costs, fees, and other damages pursuant to the South Carolina Frivolous Proceedings Act.

43. Defendant brings a counterclaim for costs, fees, and other damages pursuant to the South Carolina Frivolous Proceedings Act codified at S.C. Code Ann. § 15-36-10(A)(4).

44. Plaintiff and/or Plaintiff's attorney has clearly framed this action in his Complaint as a suit for a denial of benefits in bad faith. (See Plaintiff's Complaint Paragraph 3).
45. While Plaintiff has asserted a Declaratory Judgment Action, the clear underlying purpose of this Complaint is a bad faith denial of benefits. (See Plaintiff's Complaint Paragraph 3).
46. In addition, Plaintiff is well aware that this Court has no jurisdiction to issue workers' compensation benefits and any motion or Order filed and/or requested by Plaintiff is improper.
47. Plaintiff's motion for a temporary restraining was clearly without merit and was clearly not warranted under existing law.
48. The South Carolina Frivolous Proceedings Act states that "[a]n attorney...participating in a civil...action...may be sanctioned for:

(a) **filing a frivolous pleading, motion, or document if...**

(ii) a reasonable attorney in the same circumstances would believe that under the fact, **his claim or defense was clearly not warranted under existing law** and that a good faith or reasonable argument did not exist for the extension, modification, or reversal of existing law; [or]

(iii) a reasonable attorney presented with the same circumstances would believe that **the procurement, initiation, continuation, or defense of a civil cause was intended merely to harass or injure the other party;** or

(iv) a reasonable attorney presented with the same circumstances would believe **the pleading, motion, or document is frivolous, interposed for merely delay, or merely brought for any purpose other than...adjudication of the claim or defense upon which the proceedings are based;**

(b) **making frivolous arguments a reasonable attorney would believe were not reasonably supported by the facts; or**

- (c) making frivolous arguments that a reasonable attorney would believe were not warranted under the existing law or if there is no good faith argument that exists for the extension, modification, or reversal of existing law.

49. S.C. Code Ann. § 15-36-10(B)(2) states that “[i]f...an attorney...has violated subsection (A)(4), the court, upon its own motion or motion of a party, may impose upon the person in violation any sanction which the court considers just, equitable, and proper under the circumstances.”

50. Pursuant to S.C. Code Ann. § 15-36-10(G)(1), sanctions may include “...reasonable costs and attorney’s fees of the prevailing party. Costs shall include but not be limited to the time required...by the frivolous proceeding, and travel expenses, mileage, parking, costs of reports, and any additional reasonable consequential expenses of the prevailing party resulting from the frivolous proceeding.”

51. Plaintiff and/or Plaintiff’s attorney specifically and clearly violated S.C. Code Ann. § 15-36-10(A)(4)(a)(ii) and 15-36-10(A)(4)(c).

52. Cook v. Mack’s Transfer clearly establishes that this court has no jurisdiction to hear this matter or this type of action.

53. For reference, The Cook court concluded “[i]f the dispute concerns an alleged wrongful denial of statutory benefits, the Commission has exclusive jurisdiction to adjudicate the controversy. Whether the denial is willful, in bad faith, negligent, or the result of a good faith difference is immaterial to the question of the Commission’s exclusive jurisdiction. Since a remedy exists under the statute, the injured worker has no right to bring a common law action in the courts...” (emphasis added).

54. In addition, S.C. Code Ann. § 42-1-540, states “[t]he rights and remedies granted by this Title to an employee when he and his employer have accepted the provisions of this Title, respectively, to pay and accept compensation on account of personal injury or death by accident, **shall exclude all other rights and remedies of such employee....**as against the employer, at common law or otherwise, on account of such injury, loss of service, or death.” (emphasis added).

55. Cook stands for the proposition that this exact action taken by Plaintiff and/or Plaintiff’s attorney is improper, without legal merit or basis, and is functionally frivolous.

56. Further, Plaintiff and/or Plaintiff’s attorney is most certainly aware of S.C. Code Ann. § 42-1-540 which clearly states that the Act is the sole and exclusive remedy for Claimant.

57. Because of these actions, this court should order Plaintiff and/or Plaintiff’s attorney to pay monetary sanctions equal to Defendant’s costs, fees, and expenses to reply to this Complaint and the original temporary restraining order pursuant to S.C. Code Ann. § 15-36-10(G)(1).

PRAYER FOR RELIEF

WHEREFORE, Defendant/Counterclaim Plaintiff prays for judgment in their favor and against Plaintiff as follows:

- a. Pursuant to Rule 57, this Court may order a speedy hearing on a declaratory judgment action and may advance it on the calendar. Defendant requests this Court order a speedy hearing pursuant to Rule 57.
- b. A finding that Plaintiff has not joined the proper parties to this matter.
- c. A finding that Defendant is not a proper party to this matter.

- d. A denial of Plaintiff's request for declaratory judgment that S.C. Code Ann. § 42-9-260 is unconstitutional.
- e. A finding that Plaintiff's Complaint is in violation of the South Carolina Frivolous Proceedings Act codified at S.C. Code Ann. § 15-36-10(A)(4).
- f. A finding that the motion for a temporary restraining order was not warranted under the existing law.
- g. A monetary award equal to the total costs and fees related to the response and defense of the Complaint and/or the temporary restraining order;
- h. All attorney's fees and costs;
- i. Pre- and post-judgment interest in the statutory amount; and
- j. Any other relief this Court deems just.



LANDON L. HUGHEY
BRETT H. BAYNE
MCANGUS GOUDELOCK & COURIE, L.L.C.
Post Office Box 12519, Capitol Station
Meridian, 1320 Main Street, 10th Floor
Columbia, South Carolina 29211-2519
(803) 779-2300
Attorneys for the Employer/Carrier

Columbia, South Carolina
October 21, 2013

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

CLARENCE WINFREY,)

Claimant,)

v.)

ARCHWAY SERVICES INC,)

Employer,)

and)

AMERICAN FIRE & CASUALTY)
INSURANCE COMPANY C/O LIBERTY)
MUTUAL INSURANCE,)

Carrier,)

Civil Action No. 2013-CP-40-05888

CERTIFICATE OF SERVICE

JEANETTE W. McBRIDE
C.C.P. & G.S.

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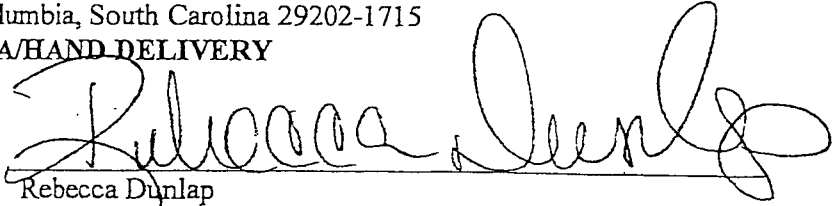
RICHLAND COUNTY
FILED

Defendants.

I hereby certify that I have this 21st day of October, 2013 served a copy of the foregoing **Answer and Counterclaim**, on behalf of Employer/Carrier, by mailing copies of same, postage prepaid, in the United States mail, with sufficient postage affixed as follows:

TO: Preston F. McDaniel, Esquire
The McDaniel Law Firm
1315 Elmwood Avenue
Columbia, South Carolina 29201
VIA/HAND DELIVERY

South Carolina Worker's Compensation Commission
1333 Main Street, Suite 500 - Post Office Box 1715
Columbia, South Carolina 29202-1715
VIA/HAND DELIVERY


Rebecca Dunlap
Legal Assistant to Landon L. Hughey

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

CLARENCE B. WINFREY, JR.,

Plaintiff-Movant,

v.

AMERICAN FIRE AND CASUALTY CO.,

Defendant-Respondent.

C/A No. 2013-CP-40-05888

IN RE:

South Carolina Workers
Compensation Commission
WCC File No.: 1306305

CLARENCE B. WINFREY, JR.,

Employee-Claimant,

v.

ARCHWAY SERVICE, INC.,

Employer, and

AMERICAN FIRE AND CASUALTY CO.,

As Carrier,

Defendants.

MOTION FOR NEW TRIAL
RECONSIDERATION AND/OR TO
ALTER OR AMEND THE JUDGMENT
PURSUANT TO
SCRCP RULE 59(e)

RICHLAND COUNTY
FILED
2013 OCT 18 PM 4:27
JEANETTE W. GOSSETT
C.C.R. & G.S.

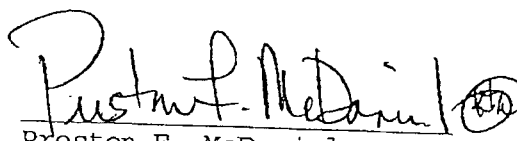
TO: LANDON L. HUGHEY, ESQUIRE, and BRETT H. BAYNE, ESQUIRE,
ATTORNEYS FOR DEFENDANT AMERICAN FIRE AND CASUALTY COMPANY,
AND ATTORNEY OF RECORD IN THE WORKERS' COMPENSATION CLAIM;

YOU WILL PLEASE TAKE NOTICE that on the tenth (10th) day
after service hereof or as soon thereafter as Counsel may be

heard or such other time as designated by the Court (due to the emergency nature of the request for a Temporary Restraining Order, the Plaintiff would ask the Court to waive the ten (10) day notice requirement and set this matter for Hearing as soon as the Court's calendar will allow), Counsel will move for a New Trial, Reconsideration and/or to Alter or Amend the Judgment Pursuant to SCRCF Rule 59(e), as further set forth in the Memorandum attached hereto in support of Motion.

I SO MOVE.

Respectfully submitted,



Preston F. McDaniel
McDANIEL LAW FIRM
1315 Elmwood Avenue
Columbia, SC 29201
(803) 771-7211

Attorney for the Plaintiff

October 18, 2013

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
) FOR THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND)

CLARENCE B. WINFREY, JR.,) C/A No. 2013-CP-40-05888
)

Plaintiff-Movant,)

v.)

AMERICAN FIRE AND CASUALTY CO.,)

Defendant-Respondent.)

IN RE:)

South Carolina Workers)
Compensation Commission)
WCC File No.: 1306305)

CLARENCE B. WINFREY, JR.,)

Employee-Claimant,)

v.)

ARCHWAY SERVICE, INC.,)

Employer, and)

AMERICAN FIRE AND CASUALTY CO.,)

As Carrier,)

Defendants.)

MEMORANDUM IN SUPPORT OF
MOTION FOR NEW TRIAL
RECONSIDERATION AND/OR TO
ALTER OR AMEND THE JUDGMENT
PURSUANT TO
SCRCP RULE 59(e)

RICHLAND COUNTY
FILED
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JEANETTE WINFREY
C.C.P. & C.S.

In support of the Motion, the Movant would respectfully
submit unto the Court and ask for reconsideration on the
following basis:

1. That the Plaintiff would respectfully submit that the Court overlooked or misapprehended the following points in reference to its Decision in this matter and would request a hearing and reconsideration of the Court's decision.

2. That attached hereto and incorporated herein by reference is the case of Peek v. Spartanburg Regional Healthcare System, 367 S.C. 450, 626 S.E.2nd 34 (SC App 2006), reh. den., cert. den. That case is on all fours with the current case wherein the plaintiff was requesting affirmative relief by the Court in the form of a Temporary Restraining Order to maintain the status quo and to grant what the Plaintiff would refer to as affirmative relief in that case as was sought in this case. A copy is attached hereto as Exhibit "A".

3. That based upon a review of the Court's Order, the Court misapprehended its authority to require the Defendant to take an affirmative action in a Temporary Restraining Order. The Plaintiff was requesting a Temporary Restraining Order or Injunction restraining the Defendant from suspending or terminating benefits under the section of the Code, S.C. Code §42-9-260, which the Plaintiff alleged was unconstitutional. While the Plaintiff was requesting that benefits be reinstated, such request was in reality a request that the benefits be reinstated under the Temporary Restraining Order retroactively

to the date that they were wrongfully suspended under the unconstitutional provisions of the Statute. Therefore, the Plaintiff was specifically asking the Court to make a preliminary or prima facie determination that the Statute was unconstitutional (as it did in the TRO without notice) to prevent irreparable harm by issuing a Temporary Restraining Order "restraining" the Defendant from taking the action of suspending the Plaintiff's benefits based on the unconstitutional provisions of the Statute. This is identical to the situation in Peek v. Spartanburg Regional Healthcare System, supra, and in Brown v. Porcher, 660 F.2nd 1001, CA4, SC, (1981). In the Peek case as the Court will note, the Court of Appeals affirmed the Decision of the Circuit Court to enjoin and temporarily restrain the hospital from taking the affirmative action of suspending the doctor's privileges to practice anesthesiology in the hospital thus depriving her of income from her services. The Court found that in that case that irreparable harm existed and specifically stated the following:

"When seeking preliminary injunction, plaintiff need not prove absolute legal right; plaintiff need only present fair question to raise as to existence of such right . . ."

* * *

"While economic loss does not, in and of itself constitute irreparable harm, such harm will be

found if economic loss threatens the very existence of plaintiff's business." District of Columbia v. E. Trans-Waste of Md., Inc., 758 A.2d 1, 15 (S.C. 2000).

In this case, the economic loss threatens the very existence of the Plaintiff himself as this Court found in issuing the TRO without notice.

4. In the case of Brown v. Porcher, Ms. Brown sought a Temporary Restraining Order restraining the South Carolina Employment Security Commission from suspending her unemployment compensation benefits. In that case, the United States Fourth Circuit Court of Appeals affirmed the District Court's Decision to grant the Restraining Order, restraining the Commission from suspending or terminating the Claimant's benefits and ordered reinstatement of those benefits. Brown v. Porcher, supra.

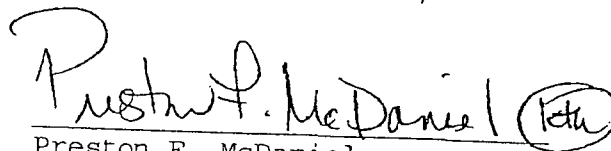
Therefore, this Court misapprehended that the Plaintiff's request for the Temporary Restraining Order was in fact to enjoin or restrain and to maintain again, as was argued to this Court in oral argument, the status quo by restraining the activity on the behalf of the Defendant of suspending the Plaintiff's (Claimant's) compensation benefits.

Quoting the United States Federal District Court of Appeals from the Fourth Circuit's opinion:

"The nature of unemployment compensation creates strong equities in favor of the claimant. . . ."

The Plaintiff would submit that the same strong equities apply to compensation benefits and there can be no greater equity than the Plaintiff's life which is irreparable harm that can be done by the Defendant stopping his benefits to both compensation and medical care. See Exhibit "B" which is a letter from his doctor in support of that statement.

Respectfully submitted,

A handwritten signature in cursive script that reads "Preston F. McDaniel". To the right of the signature is a circled monogram, possibly "PFM".

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

Attorney for Plaintiff

October 18, 2013

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

Proudly representing injured workers
for over 25 years

Preston F. McDaniel
Justin S. Byars
Matthew Robertson
OF COUNSEL
Michael Johnson, P.C.

Telephone (803) 771-7211

Facsimile (803) 252-0709

October 16, 2013

VIA EMAIL: rhughey@mgclaw.com
Landon L. Hughey, Esquire
McAngus Goudelock & Courie, LLC
Post Office Box 12519
Columbia, South Carolina 29211

RE: CLARENCE B. WINFREY, JR. v. ARCHWAY SERVICE, INC.
WCC File No. 1306305

Dear Rocky:

In reference to the Subpoena that we received today by mail October 16, 2013. Obviously we did not receive the 15 day required notice and therefore you do not have proper service and so we will not be attending the Deposition on the 21st.

Second, it is my opinion that the only thing that is pending before the Commission is our request for reinstatement of benefits based on whether or not your clients can established that they conducted a good faith investigation prior to stopping benefits.

However, because I want to make sure that nothing stupid happens at that Hearing especially considering everything we have given you, I am going to go ahead and file a Form 50 and after I file that you will have every right to take Mr. Winfrey's Deposition and I will be glad to waive notice and will not require any notice once I get that filed. I am going to try to get that out of here by tomorrow but if not it will be filed as soon as I get back from Comp Camp.

Attached is a statement we just received from Mr. Winfrey's doctor.

If you have any questions give me a call.

Sincerely yours,



Preston F. McDaniel

PFM/lmt





ATTORNEYS AT LAW

REPLY TO
LONDON HUGHEY
Direct Dial: (803) 227-2261
rhughey@mgclaw.com
COLUMBIA

October 21, 2013

VIA HAND DELIVERY

Commissioner T. Scott Beck
S. C. WORKERS' COMPENSATION COMMISSION
1333 Main Street, Suite 500
Columbia, South Carolina 29201

RE: Clarence Winfrey v. Archway Services and American
Fire & Casualty Insurance Company c/o Liberty Mutual Insurance
Date of Accident: May 22, 2013
WCC File No.: 1306305
Our File No.: 2095.13137
Claim No.: 22209963

Dear Ms. Crocker:

Please find enclosed the original and three (3) copies of Defendant's Motion to Compel Deposition of Claimant and for Sanctions, Costs, Fees, and/or Any Other Relief Deemed Appropriate by the Commission for filing. Also enclosed is our check in the amount of \$25.00 for the appropriate filing fee.

By copy of this letter to Preston F. McDaniel, Esquire, the Claimant's attorney, we are notifying him of this submission and serving a copy of the same upon him by mail.

With kind regards, I am

Very truly yours,

Landon Hughey

LLH/rd

Enc.

cc: Virginia Crocker, Judicial Director (w/enc)(via/hand delivery)
Preston F. McDaniel, Esquire (w/enc)
Terri Hughes, Liberty Mutual Insurance (w/enc)(via/email only)
Liberty Mutual Hub (w/enc)(via/email only)
Susan Kizer, Archway Services Inc. (w/enc)

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 1306305

CLARENCE WINFREY,

Employee,

Claimant,

vs.

ARCHWAY SERVICES INC,

Employer,

AND

AMERICAN FIRE & CASUALTY
INSURANCE COMPANY C/O LIBERTY
MUTUAL INSURANCE,

Carrier,

Defendants.

CERTIFICATE
OF
SERVICE

The undersigned certifies that she is an employee at MCANGUS GOUDELOCK & COURIE, and that she has served, on the date set forth below, a copy of the document described below, in the above entitled action to the following persons, pursuant to Section 15-9-930 and Section 15-9-940 of the Code of Laws of South Carolina, 1976, by depositing a copy of same in the United States Mail, postage prepaid, addressed to:

TO: Preston F. McDaniel, Esquire
The McDaniel Law Firm
1315 Elmwood Avenue
Columbia, South Carolina 29201
VIA/HAND DELIVERY

South Carolina Worker's Compensation Commission
1333 Main Street, Suite 500 · Post Office Box 1715
Columbia, South Carolina 29202-1715
VIA/HAND DELIVERY

DOCUMENT: **Motion to Compel Deposition of Claimant and for Sanctions,
Costs, Fees, and/or Any Other Relief Deemed Appropriate by
the Commission**

DATE OF MAILING: October 21, 2013

Rebecca Dunlap

Legal Assistant to Landon L. Hughey

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 1306305

C LARENCE WINFREY,

Employee,

Claimant,

vs.

ARCHWAY SERVICES INC,

Employer,

AND

AMERICAN FIRE & CASUALTY
INSURANCE COMPANY C/O LIBERTY
MUTUAL INSURANCE

Carrier,

Defendants.

**MOTION TO COMPEL
DEPOSITION OF CLAIMANT AND
FOR SANCTIONS, COSTS, FEES,
AND/OR ANY OTHER RELIEF
DEEMED APPROPRIATE BY THE
COMMISSION**

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
AND PRESTON F. MCDANIEL, ESQUIRE:

Pursuant to S.C. Code Ann. § 1-23-320 and South Carolina Rule of Civil Procedure 30, Defendants noticed Claimant's deposition for October 21, 2013 through a subpoena issued and served on October 11, 2013¹. By letter received on October 18, 2013, Claimant and Claimant's attorney informed Defendants that both refused to attend the properly scheduled deposition because Claimant was not given fifteen (15) days notice². Brett Bayne, attorney for Defendants, attended the deposition on October 21, 2013 to create a record of Claimant's willful refusal to attend the deposition³. Defendants ask the Commission to compel Claimant's attendance at a

¹ Attached as Exhibit A is the letter noticing the deposition.

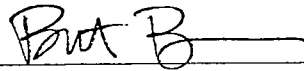
² Attached as Exhibit B is the letter from Claimant's attorney stating that Claimant will not appear for the properly scheduled deposition because he did not received fifteen (15) days notice.

³ The Commission will be provided with a transcript of the deposition as soon as one is available.

future deposition, to sanction Claimant and/or Claimant's attorney for willful refusal to ~~attend~~ a properly scheduled and noticed deposition, and to issue an award for all costs, fees, and attorney's fees associated with the scheduling and attendance the properly scheduled deposition.

S.C. Code Ann. § 1-23-320(C) provides that "[a] party to these proceedings may ~~cause~~ to be taken the depositions of witnesses...**depositions must be taken in accordance with and** subject to the same provisions, conditions, and restrictions as apply to **the taking of like depositions in civil actions at law in the court of common pleas; and the same rules with respect to the giving of notice to the opposite party,** the taking and transcribing of testimony, the transmission and certification of it, and matters relating to practice **apply.**" (emphasis added). South Carolina Rule of Civil Procedure 30(b)(1) provides that "[a] party desiring to take the deposition of any person upon oral examination shall give ten (10) days notice in writing to every other party in the action." (emphasis added).

There is no dispute that Defendants gave Claimant ten (10) days notice in compliance with S.C. Code Ann. § 1-23-320(C) and SCRPC Rule 30(b)(1). Claimant's refusal to submit to a deposition, and Claimant's attorney's instruction to his client to not appear at the deposition, is in clear violation of these rules. Defendants have incurred substantial costs associated with the scheduling, preparation, and attendance at the deposition on October 21, 2013. The Commission should order Claimant to appear for a deposition and award Defendants all costs and fees associated with the scheduling, preparation, cancellation, this motion, and the eventual rescheduling of this deposition.



LANDON L. HUGHEY

BRETT H. BAYNE

MCANGUS GOUDELOCK & COURIE, L.L.C.

Post Office Box 12519, Capitol Station

Meridian, 1320 Main Street, 10th Floor

Columbia, South Carolina 29211-2519

(803) 779-2300

Attorneys for the Employer/Carrier

Columbia, South Carolina
October 21, 2013



ATTORNEYS AT LAW

Reply To
LONDON HUGHEY
Direct Dial: (803) 227-2261
rhughey@mgclaw.com
COLUMBIA

October 11, 2013

Preston F. McDaniel, Esquire
The McDaniel Law Firm
1315 Elmwood Avenue
Columbia, South Carolina 29201

RE: Clarence Winfrey v. Archway Services and American Fire & Casualty Insurance
Company c/o Liberty Mutual Insurance
Date of Accident: May 22, 2013
WCC File No.: 1306305
Our File No.: 2095.13137
Claim No.: 22209963

Dear Mr. McDaniel:

Enclosed is a Subpoena requiring Clarence Winfrey's appearance for a deposition to be taken in the above referenced matter. This deposition is set for **Monday, October 21, 2013 at 10:00AM** at The McDaniel Law Firm, 1315 Elmwood Avenue, Columbia, South Carolina 29201.

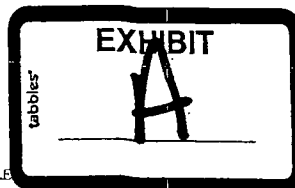
If you have any questions, please do not hesitate to call me or my paralegal, Stephanie W. Kluszczynski, at (803) 227-2250.

Very truly yours,

Landon Hughey

LLH/SWK

cc: Susan Kizer, Archway Services Inc
Terri Hughes, Liberty Mutual Insurance (via email & HUB)



South Carolina Workers' Compensation Commission

P.O. Box 1715 • 1333 Main Street
Columbia, South Carolina 29202-1715
(803) 737-5700

WCC File # 1306305
Carrier File # 22209963
Carrier Code # 00475
Employer FEIN 510663955

Clarence Winfrey
Claimant's Name SSN

Address City State Zip

Home Phone # Work Phone #
Preparer's Name Landon Hughey

Archway Services Inc
Employer's Name
2316 Kings Road Ext.
Shelby, North Carolina 28152
Address City State Zip
American Fire & Casualty Insurance Company c/o
Liberty Mutual Insurance
Insurance Carrier
(803) 227-2261
Phone Number

TO: Clarence Winfrey c/o Preston F. McDaniel, Esquire

☐ YOU ARE COMMANDED to appear before the above named Commission at the place, date and time specified below to testify in the above case.

PLACE OF TESTIMONY: _____ ROOM: _____
DATE AND TIME: _____

☒ YOU ARE COMMANDED to appear at the place, date and time specified below to testify at the taking of a deposition in the above case.

The McDaniel Law Firm
1315 Elmwood Avenue, Columbia

PLACE OF DEPOSITION: South Carolina 29201 DATE AND TIME: 10/21/13 at 10:00AM

☐ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents or objects):

PLACE: _____ DATE AND TIME: _____

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES: _____ DATE AND TIME: _____

THIS SUBPOENA SHALL REMAIN IN EFFECT UNTIL YOU ARE GRANTED PERMISSION TO DEPART BY THE COMMISSIONER OR AN OFFICER ACTING ON BEHALF OF THE COMMISSIONER. QUESTIONS CONCERNING THIS SUBPOENA SHOULD BE ADDRESSED TO THE ISSUING OFFICER

Attorney for Defendants (803) 227-2261 October 11, 2013
ISSUING OFFICER'S SIGNATURE AND TITLE PHONE # DATE

Serve this form according to R.67-212b. Refer to R.67-212 and R.67-214 for additional information. Procedural questions may be addressed to the Judicial Department (803/737-5675).

WCC FORM # 27 REV. DATE 3/96

27

SUBPOENA

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 1306305

CLARENCE WINFREY,

Employee,

Claimant,

vs.

ARCHWAY SERVICES INC,

Employer,

AND

AMERICAN FIRE & CASUALTY
INSURANCE COMPANY C/O LIBERTY
MUTUAL INSURANCE,

Carrier,

Defendants.

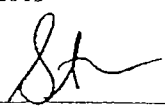
CERTIFICATE
OF
SERVICE

The undersigned certifies that she is an employee at MCANGUS GOUDELOCK & COURIE, and that she has served, on the date set forth below, a copy of the document described below, in the above entitled action to the following persons, pursuant to Section 15-9-930 and Section 15-9-940 of the Code of Laws of South Carolina, 1976, by depositing a copy of same in the United States Mail, postage prepaid, addressed to:

TO: Preston F. McDaniel, Esquire
The McDaniel Law Firm
1315 Elmwood Avenue
Columbia, South Carolina 29201

DOCUMENT: Notice of Deposition

DATE OF
MAILING: October 11, 2013


Stephanie W. Kluszczynski
Paralegal to Landon Hughey

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

Proudly representing injured workers
for over 25 years

Preston F. McDaniel
Justin S. Byars
Matthew Robertson
OF COUNSEL
Michael Johnson, P.C.

Telephone (803) 771-7211

Facsimile (803) 252-0709

October 16, 2013

VIA EMAIL: rhughey@mgclaw.com
Landon L. Hughey, Esquire
McAngus Goudelock & Courie, LLC
Post Office Box 12519
Columbia, South Carolina 29211

RE: CLARENCE B. WINFREY, JR. v. ARCHWAY SERVICE, INC.
WCC File No. 1306305

Dear Rocky:

In reference to the Subpoena that we received today by mail October 16, 2013. Obviously we did not receive the 15 day required notice and therefore you do not have proper service and so we will not be attending the Deposition on the 21st.

Second, it is my opinion that the only thing that is pending before the Commission is our request for reinstatement of benefits based on whether or not your clients can established that they conducted a good faith investigation prior to stopping benefits.

However, because I want to make sure that nothing stupid happens at that Hearing especially considering everything we have given you, I am going to go ahead and file a Form 50 and after I file that you will have every right to take Mr. Winfrey's Deposition and I will be glad to waive notice and will not require any notice once I get that filed. I am going to try to get that out of here by tomorrow but if not it will be filed as soon as I get back from Comp Camp.

Attached is a statement we just received from Mr. Winfrey's doctor.

If you have any questions give me a call.

Sincerely yours,



Preston F. McDaniel

PFM/rmt





ATTORNEYS AT LAW

Reply To
LONDON HUGHEY
Direct Dial: (803) 227-2261
rhughey@mgclaw.com
COLUMBIA

October 29, 2013

VIA EMAIL AND US MAIL

Preston F. McDaniel, Esquire
The McDaniel Law Firm
1315 Elmwood Avenue
Columbia, South Carolina 29201

RE: Clarence Winfrey v. Archway Services and American Fire & Casualty Insurance
Company c/o Liberty Mutual Insurance
Date of Accident: May 22, 2013
WCC File No.: 1306305
Our File No.: 2095.13137
Claim No.: 22209963

Dear Mr. McDaniel:

Enclosed and served upon you is a Notice of Deposition of Clarence Winfrey in the above-referenced matter. This deposition will take place on **Friday, November 1, 2013, at 10:00am** at the offices of Preston F. McDaniel, Esquire, The McDaniel Law Firm, 1315 Elmwood Avenue Columbia, South Carolina 29201.

If you have any problems with the time, date, or location, please contact either Stephanie W. Kluszczynski in my office or me and we will be glad to reschedule it.

Very truly yours,

Landon Hughey

LLH/SWK

Enclosures

cc: Susan Kizer, Archway Services Inc (via email)
Terri Hughes, Liberty Mutual Insurance (via email & HUB)

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 1306305

CLARENCE WINFREY,

Employee,

Claimant,

vs.

ARCHWAY SERVICES INC,

Employer,

AND

AMERICAN FIRE & CASUALTY
INSURANCE COMPANY c/o LIBERTY
MUTUAL INSURANCE,

Carrier,

Defendants.

NOTICE OF DEPOSITION
OF
CLARENCE WINFREY

TO: PRESTON F. MCDANIEL, ESQUIRE, ATTORNEY FOR CLAIMANT:

PLEASE TAKE NOTICE that the oral deposition of Clarence Winfrey, Claimant in the above-captioned action, will be taken pursuant to Section 42-3-160 of the South Carolina Code of Laws, 1976, before a Notary Public for South Carolina, or before some other officer authorized by law to take depositions on **Friday the 1st day of November, 2013, at 10:00am** and from day to day thereafter until the taking of the deposition is adjourned, at the offices of Preston F. McDaniel, Esquire, The McDaniel Law Firm, 1315 Elmwood Avenue, Columbia, South Carolina 29201 . You are hereby notified of the time and place, to produce said witness on oral examination, and you are further invited to attend and participate.- This deposition is being taken for the purpose of discovery, for use at trial and-for all other purposes as are permitted under the rules of the Commission and all applicable statutes and laws.



Landon Hughey
MCANGUS GOUDELOCK & COURIE, L.L.C.
Post Office Box 12519, Capitol Station
1320 Main Street. 10th Floor
Columbia, South Carolina 29211-2519
(803) 779-2300
Attorneys for the Employer/Carrier

October 29, 2013
Columbia, South Carolina

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 1306305

CLARENCE WINFREY,	}	
	}	
Employee,	}	
	}	
Claimant,	}	
	}	
vs.	}	
	}	
ARCHWAY SERVICES INC,	}	
	}	
Employer,	}	
	}	
AND	}	
	}	
AMERICAN FIRE & CASUALTY	}	
INSURANCE COMPANY c/o LIBERTY	}	
MUTUAL INSURANCE,	}	
	}	
Carrier,	}	
	}	
Defendants.	}	

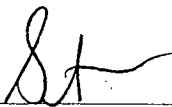
**CERTIFICATE
OF
SERVICE**

The undersigned certifies that she is an employee at MCANGUS GOUDELOCK & COURIE, and that she has served, on the date set forth below, a copy of the document described below, in the above entitled action to the following persons, pursuant to Section 15-9-930 and Section 15-9-940 of the Code of Laws of South Carolina, 1976, by depositing a copy of same in the United States Mail, postage prepaid, addressed to:

TO: Preston F. McDaniel, Esquire
The McDaniel Law Firm
1315 Elmwood Avenue
Columbia, South Carolina 29201

DOCUMENT: Notice of Deposition of **Clarence Winfrey**

DATE OF MAILING: October 29, 2013


Stephanie W. Kluszczynski
Paralegal to Landon Hughey

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

Proudly representing injured workers
for over 25 years.

Preston F. McDaniel
Justin S. Byars
Matthew Robertson
OF COUNSEL:
Michael Johnson, P.C.

Telephone (803) 771-7211

Facsimile (803) 252-0709

October 30, 2013

Commissioner T. Scott Beck
SC Workers Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202

RE: Clarence B. Winfrey, Jr. v. Archway Service, Inc.
WCC File No.: 1306305

Dear Commissioner Beck:

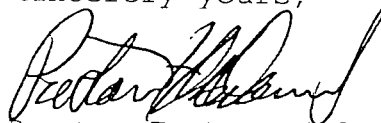
Please find enclosed a copy of the Claimant's Pre-Hearing Brief in the above referenced matter.

By copy of this letter, with enclosures, we are forwarding a copy of our Pre-Hearing Brief and APA submissions to opposing counsel on this date.

I hope this is sufficient for filing this matter with the Commission. However, if additional information is needed, please feel free to contact me at your convenience.

~~I look forward to seeing you at the hearing and to a~~
resolution in the best interest of all parties concerned.

Sincerely yours,



Preston F. McDaniel

PFM/kth
Enclosures

cc: Landon L. Hughey, Esquire

CERTIFICATE OF SERVICE BY MAIL

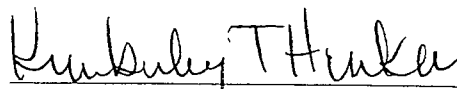
WCC FILE NO. 1306305

I hereby certify that I have on this day served the following in the matter of Clarence B. Winfrey, Jr. v. Archway Service, Inc. with a copy of the Claimant's Pre-Hearing Brief, Notice of Witnesses and Written Reports and APA Submissions by depositing the same in the United States Mail, with adequate postage thereon, addressed as follows:

Virginia L. Crocker, Judicial Director
SC Workers' Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202

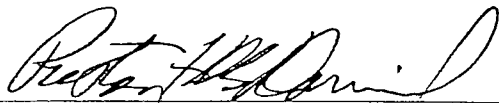
Landon L. Hughey, Esquire
McAngus, Goudelock & Courie
Post Office Box 12519
Capitol Station
Columbia, SC 29211-2519

I also hereby certify that a regular communication by mail exists.



Kimberley T. Hinkle
Paralegal to Preston F. McDaniel

SWORN TO BEFORE ME this
30 day of October, 2013.



(L.S.)

Notary Public for South Carolina

My Commission Expires: 10/28/18



Claimant's Name: Clarence B. Winfrey, Jr. Employer's Name: Archway Service, Inc.
Address: _____ Address: 2316 Kings Road
City: Columbia State: SC Zip: 29210 City: Shelby State: NC Zip: 28152
Home Phone: () - Work Phone: () - Carrier: American Fire and Casualty Co.
Preparer's Name: Preston F. McDaniel Preparer's Phone #: (803) 771-7211

A claim for workers' compensation benefits is made based on the following grounds:

☐ Injury ☐ Illness ☐ Repetitive Trauma

1. Compensation Rate: Not Hearing Issue 2. AWW: \$ Not Hearing Issue Date of Injury: 05/22/2013
3. Type of injury and body part(s): SEE ATTACHMENT
4. Facts in controversy: SEE ATTACHMENT.
5. Legal issues involved: SEE ATTACHMENT
6. Unusual aspects: NONE
Witnesses (designate if expert):* SEE NOTICE OF WITNESSES.
7. Exhibits: CLAIMANT REQUESTS THAT WCC FILE NO. 1306305 BE MADE A PART OF THE RECORD. SEE ATTACHMENT.
8. Medical evidence (indicate report pursuant to R.67-612; deposition or appearance):
SEE NOTICE OF WRITTEN REPORTS/PHYSICIANS.
9. Name, address, and specialty, if any, of the treating physician:
DR. LANNEAU LIDE, SC HEART CENTER, 2001 LAUREL STREET, COLUMBIA, SC 29204
10. Impairment rating(s); body part(s); physician and date of opinion: _____
12. I am amending my Form 50/51 in the following manner: _____

☐ **Mediation**

- ☐ a. Mediation is requested to be ordered pursuant to Reg. 67-1801 B.
- ☐ b. Mediation is required pursuant to Reg. 67-1802.
- ☐ c. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.
- ☐ d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.

Questions regarding mediation may be submitted to mediation@wcc.sc.gov.

I verify the contents of this form are accurate and true to the best of my knowledge.

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to SEE ATTACHED CERTIFICATE OF SERVICE on the _____ day of 20 by: ☒ first class postage ☐ certified mail ☐ personal service.

Signature: Email: mcdaniellaw@hotmail.com
Date of hearing: November 13, 2013 Time needed for hearing: 1.0 hour

Questions about the use of this form should be directed to the Jurisdictional Commissioner. Refer to Regulations 67-204 through 67-211 and Regulations 67-601 through 67-615; as well as Regulation 67-1801. File this form and proof of service on the opposing party according to R.67-611 and R.67-212. Do not send medical reports. * Commissioners reserve the right to admit expert witnesses at hearings.

ATTACHMENT FOR FORM 58

Clarence B. Winfrey v. Archway Service, Inc.
WCC File No.: 1306305

4a. Facts in controversy:

This is a Form 15 III hearing. SC Code §42-9-260(A) specifically provides that, "upon making the first payment, the employer immediately shall notify the Commission, in accordance with a form prescribed by the Commission, that payment of compensation has begun." The Defendants did not comply with the Statute by filing the required form and notification and the Commissioner will find that the Commission has already fined the Defendants for non-compliance which was admitted. Following the accident on May 22, 2013 compensation benefits and medical care were started and authorized. On September 16th, one hundred and eighteen (118) days after the accident, the Claimant's attorney received one copy of a Form 15 III terminating benefits on the basis that: "based on a Good Faith Investigation, the claim is denied." Pursuant to the requirements of the Regulations there was no attached documentation as to the Good Faith Investigation that was alleged to have been performed and/or the results of that investigation. The only additional information contained as to the basis that was supposedly found during the alleged Good Faith Investigation assuming a Good Faith Investigation is found, on the form states that reason denied: "employee failed to meet the burden of a compensable injury under the South Carolina Workers' Compensation Act."

In this situation where the Defendants had started compensation benefits and had authorized medical care the Act does provide that during the first one hundred and fifty (150) days for very limited reasons they may stop benefits without a hearing, it is incumbent upon the Defendants to at least set forth a prima facie case to establish the grounds and in this case that a Good Faith Investigation by the employer was conducted and the grounds that that Good Faith Investigation established for denial of the claim. This prima facie case should be sufficient enough to establish that basis so that the Claimant, who has a right to request a hearing, is able to respond to the information obtained allegedly through the Investigation.

In this case, the Claimant has absolutely no idea as to whether or not a Good Faith Investigation was actually conducted and the results of that Investigation that in the words of the statute revealed evidence of the grounds for the denial of the claim.

In an effort to determine whether a Good Faith Investigation was conducted and the results of that Investigation that lead to a termination of benefits without a hearing, the Claimant subpoenaed the adjuster as the managing agent to a deposition and subpoenaed the adjuster's file and requested any and all records maintained by the adjuster and/or the employer in reference to the claim. While no order was issued quashing the subpoena nor has one been issued as to the time of this filing, the adjuster failed to appear at the time for the deposition and after notice that the deposition would go forward barring an Order, a Motion to Quash the Subpoena as to both the adjuster and the adjuster's file was filed. Therefore, the Claimant has no knowledge as to whether a Good Faith Investigation was in fact conducted and/or as to the basis and the evidence that allegedly was established through that Good Faith Investigation that lead to this denial and termination of benefits.

However, as an assumption as to the basis that may be submitted into evidence, the Claimant will submit evidence from the rehab nurse, the Claimant and medical records to establish that the Claimant sustained a compensable injury pursuant to the Act. The evidence will establish that on May 28th, Doctor's Care, Dr. Greenfield, diagnosed the Claimant with tachycardia following an electrical shock and muscle shock following an electrical shock injury involving 480 volt rotisserie shock the previous Thursday. -
Authorization was requested and given by Susan Kizer, the bookkeeper for the Employer for treatment.

That Lexington Medical Center records where he was transported by ambulance from the cardiologist's office, including the operative notes of Dr. Travis note an electrocution and myocardial infarction and a history of the problems beginning after the electrical shock five (5) days before. In the discharge summary, the Claimant is diagnosed with electrical shock injury and multiple diagnoses of cardiological problems stemming from electrical shock injury.

On the assumption that the carrier had some questions as to the causal relationship of the injuries to the accident, the original authorized treating physician, Dr. Karen Greenfield, the treating cardiologist, Dr. Lide and the cardiovascular surgeon, Dr. Travis, have all issued opinions that the Claimant's medical problems stem directly from the electrical shock injury.

As set forth on the Form 50 filed with the Commission, the electrical shock was immediately reported to the Claimant's supervisor.

The Claimant is submitting all of this under the possibility that some misinformation from somewhere was obtained by the Carrier based on its, "Good Faith" Investigation. Additionally, the rehab nurse will be called as a witness to testify as to the Medical Authorization Release form that was signed so that the Carrier could have any records available to it during its investigation.

5a. Legal Issues Involved:

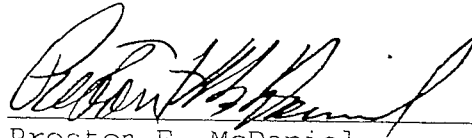
IN CORRELATION WITH RESPOSES UNDER NUMBER 4:

In accordance with the factual issue of noncompliance under SC Code §42-9-260(A), subsection G provides that, "failure to comply with this section shall result in a 25% penalty imposed upon the carrier or employer computed on the amount of benefits withheld in violation of this section and the amount of the penalty must be paid to the employee in addition to the amount of benefits withheld". The penalty and payment of benefits is mandatory for non-compliance with any part of the section.

South Carolina Code §42-9-260 (B)(4) Commission Form 15 II and III and Commission Regulation 67-504 apply to stop payment within 150 days without hearing. South Carolina Code §42-1-160 and Holly v. Owens Corning Fiberglass Corporation 301 SC 519, 392 SE 2nd 804 (SC App 1990) opinion adopted by the Supreme Court 302 SC 518, 397 SE 2nd 377 (1990) and Buff v. Columbia Baking Company 215 SC 41, 53 SE 2nd 879 (1949), apply to compensable injury by accident in this case.

9. Records from Doctor's Care (Dr. Karen Greenfield),
Lexington Medical Center (Dr. Lanneau Lide, Jr.), South
Carolina Heart Center, Kristy Thompson's report on July 22,
2013, and records from Dr. Travis dated September 30, 2013.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Preston F. McDaniel", written over a horizontal line.

Preston F. McDaniel
Attorney for Employee/Claimant

October 30, 2013

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
WCC File No: 1306305

Clarence B. Winfrey, Jr.,)

Employee-Claimant,)

v.)

Archway Service, Inc.,)

as Employer, and)

American Fire and)
Casualty Co.,)

as Carrier,)

Defendants.)

NOTICE OF WITNESSES AND
WRITTEN REPORT(S)/PHYSICIAN
OR OTHER EVIDENCE TO BE
INTRODUCED ON BEHALF OF
CLAIMANT

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION AND
ATTORNEY FOR THE EMPLOYER/CARRIER

YOU ARE HEREBY NOTIFIED THAT THE Claimant pursuant to the
provisions of the South Carolina Workers' Compensation Act and
South Carolina Code Section 1-23-330 (1976, as amended),
herewith submits the following reports/physician or other
evidence on behalf of the Claimant, to wit:

	<u>NAME OF REPORT(S)/PHYSICIAN OR OTHER EVIDENCE</u>	<u>DATE OF REPORT(S)</u>	<u>PAGE #</u>
1)	Dr. Lanneau Lide SC Heart Center	09/16/13-10/04/13	1-2
2)	Dr. Jeffrey A. Travis Lexington Cardiovascular Associates	09/30/13	3
3)	Lexington Medical Center	05/28/13-05/29/13	4-8
4)	Dr. Karen G. Greenfield Doctor's Care	05/28/13-09/17/13	9-16
5)	Kristy Thompson, RN Genex Services, Inc.	07/22/13	17-20
6)	Correspondence	07/30/13-08/07/13	21-25

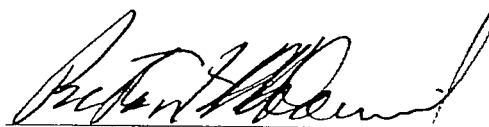
! YOU ARE FURTHER HEREBY NOTIFIED that you have the right to cross-examination; and, should you desire to exercise said right, you are to forthwith schedule the deposition(s) of any of the physicians or other person(s), whose reports are submitted, for the purposes of cross-examination.

YOU ARE FURTHER NOTIFIED that the originals of the documents referred herein, or photocopies received from said physicians/others, are being herewith forwarded to the South Carolina Workers' Compensation Commission for insertion in the file of the South Carolina Workers' Compensation Commission and inclusion into evidence on behalf of the Claimant.

YOU ARE FURTHER NOTIFIED that the following witnesses may be called on behalf of the Claimant:

The Claimant; Kristy Thompson, RN; any witness listed, named or called by the Defendants; and other lay witnesses to be named.

Respectfully submitted,



Preston F. McDaniel
McDaniel Law Firm
1315 Elmwood Avenue
Columbia, SC 29201
(803) 771-7211

Attorney for Claimant

October 30, 2013

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
WCC File No: 1306305

Clarence B. Winfrey, Jr.,)
Employee-Claimant,)
v.)
Archway Service, Inc.,)
as Employer, and)
American Fire and)
Casualty Co.,)
as Carrier,)
Defendants.)

DATE OF HEARING: 11-13-13
APA SUBMISSIONS

Pursuant to South Carolina Code §1-23-330 and Commission Rule 67-612 Preston F. McDaniel, the Attorney for the Claimant, submits the following report(s) in support of and on behalf of the Claimant in this matter:

NAME OF REPORT(S)/PHYSICIAN OR OTHER EVIDENCE	DATE OF REPORT(S)	PAGE #
1) Dr. Lanneau Lide SC Heart Center	09/16/13-10/04/13	1-2
2) Dr. Jeffrey A. Travis Lexington Cardiovascular Associates	09/30/13	3
3) Lexington Medical Center	05/28/13-05/29/13	4-8
4) Dr. Karen G. Greenfield Doctor's Care	05/28/13-09/17/13	9-16
5) Kristy Thompson, RN Genex Services, Inc.	07/22/13	17-20
6) Correspondence	07/30/13-08/07/13	21-25



October 4, 2013

Preston F. McDaniel
McDaniel Law Firm
1315 Elmwood Ave.
Columbia S. C. 29201

Dear Mr. McDaniel:

Re: CLARENCE WINFREY (08/19/1962)

Mr. Winfrey had a severe myocardial infarction after electrocution in the workplace in May. He required emergency surgery. He has severe congestive heart failure and requires continuous treatment. Lack of continuous medical therapy would likely be fatal for him. Without insurance, he cannot afford essential medication.

Sincerely,

Lanneau D. Lide, M. D.

WORKERS COMPENSATION QUESTIONNAIRE

Please indicate your medical opinion by choosing one of the options below.

☒ IT IS MY OPINION that to a reasonable degree of medical certainty (more likely than not) the symptoms and injuries that I have treated Mr. Winfrey for are a result of his work related accident on May 22, 2013, which occurred while he was working on a rotisserie when he accidentally came into contact with an exposed wire carrying 480 volts sending a severe electric shock through his left hand and arm injuring his heart.

☐ IT IS NOT MY OPINION that to a reasonable degree of medical certainty (more likely than not) the symptoms and injuries that I have treated Mr. Winfrey are a result of his work related accident on May 22, 2013, which occurred while he was working on a rotisserie when he accidentally came into contact with an exposed wire carrying 480 volts sending a severe electric shock through his left hand and arm injuring his heart.



Lanneau D. Lide, Jr., MD, FACC



A Lexington Medical Center Physician Practice

Jeffrey A. Travis, MD

Victor A. Gomez, PA-C

2728 Sunset Boulevard, Suite 101
West Columbia, SC 29169
www.lexingtoncardiovascular.com

Ph (803) 936-7095

Fx (803) 936-7908

 Lexington Medical Center

September 30, 2013

Re: Clarence Winfrey

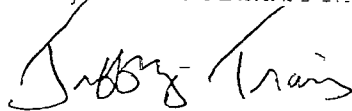
To Whom It May Concern:

Mr. Winfrey is a patient who presented with a very unusual cardiac lesion after suffering a large electrical shock. The lesion, a ventricular septal defect, is normally only seen very rarely in a setting of an acute myocardial infarction. I believe that Mr. Winfrey's electrical shock caused his heart attack and his ventricular septal defect.

Operative photos confirm a large white patch on both sides of his heart that were almost certainly entrance and exit wounds of the electricity. I have never seen anything like these patches in my 15 years of surgery. I have a photo of the anterior surface of the heart that demonstrates either the entrance or exit site.

I find it quite unbelievable that his surgery and postoperative course have been considered separate from his electrical injury at work. I see almost no other plausible explanation other than a direct cause and effect.

Sincerely,



Jeffrey A. Travis, MD

Patient Demographics

Address	Phone

Admission Information - Patient Record Only

Arrival Date/Time:	None	Admit Date/Time:	05/28/2013 3:23 PM	IP Adm. Date/Time:	05/28/2013 3:23 PM
Admission Type:	Urgent	Point of Origin:	Physician Or Clinic Referral	Admit Category:	None
Means of Arrival:	None	Primary Service:	Med/surg	Secondary Service:	N/A
Transfer Source:	None	Service Area:	Lchs Service Area	Unit:	Lmc 4th Flr Nt
Admit Provider:	Jeffrey Allen Travis, MD	Attending Provider:	Himadri Dasgupta, MD	Referring Provider:	None

Discharge Summaries

Discharge Summaries signed by Jeffrey Allen Travis, MD at 06/11/13 0638

Author:	Jeffrey Allen Travis, MD	Service:	(none)	Author Type:	Physician
Filed:	06/11/13 0638	Note Time:	06/07/13 1405		

REASON FOR ADMISSION: Acute MI and acute post infarct ventricular septal defect.

DISCHARGE MEDICATIONS: The patient is given prescriptions for aspirin 81 mg p.o. daily, vitamin D 500 mg b.i.d., Lopressor 25 mg b.i.d., multivitamin a day, Lasix 40 mg a day for 30 days, potassium chloride 20 mEq a day with the Lasix for 30 days, Altace 2.5 mg a day, Amiodarone 400 mg p.o. b.i.d. for 3 months, Plavix 75 mg a day, Pepcid 20 mg p.o. b.i.d. He was also given a prescription for Lortab 5/500, 1-2 tabs p.o. every 4 - 6 hours p.r.n. pain (#60, no refill).

PROCEDURES DURING ADMISSION

1. Transthoracic echocardiogram on May 28.
2. Cardiac catheterization on May 28.
3. Urgent coronary artery bypass grafting x1 with saphenous vein graft to the ramus intermedius, repair of postinfarct ventricular septal defect with pericardial patch, and placement of intraaortic balloon pump done on May 29, 2013.
4. Repeat echocardiogram on June 27, 2013.

DISCHARGE DIAGNOSIS(ES)

1. ST-elevation myocardial infarction, inferior wall.
2. Postinfarct ventricular septal defect.
3. Coronary artery disease.
4. Ventricular tachycardia.
5. Hypertension.
6. Congestive heart failure.
7. Pulmonary hypertension.

HISTORY OF PRESENTING ILLNESS: For full H & P, please see dictated Admission H & P, CT Surgery. In brief, the patient is a 50-year-old gentleman who on Wednesday prior to this admission was working on some electrical equipment and got a large shock. He went home from work and experienced significant chest pain as well as back and shoulder pain. This persisted through the weekend and he really did not do much over the weekend other than sit around and watch TV. He experienced persistent pain and presented to the Urgent Care Center where his EKG was abnormal and he was sent to the hospital.

Discharge Summaries (- continued-)

HOSPITAL COURSE: The patient was admitted with the above stated history. Again, he presented with an injury-type current ST elevation and was taken emergently to the Cardiac Catheterization Lab where he was found to have an occlusion of his posterior descending coronary artery as well as 3-vessel coronary disease and a VSD. We were asked to see the patient in consultation. Interestingly, the patient was fairly stable despite the magnitude of things. We assessed him and took him to the Operating Room the following morning where he underwent a single vessel bypass as outlined above and repair of a postinfarct ventricular septal defect. Also electively placed an intraaortic balloon pump to unload the patient prior to coming off cardiopulmonary bypass. He tolerated the procedure without complications and was taken to the Intensive Care Unit postoperatively. His drips were weaned early postop as well as his intraaortic balloon pump and that was removed without incident. He remained in the Intensive Care Unit and had gotten him up to the chair, began to do some ambulation. He was back in his chair and had a loss of consciousness and telemetry showed that he was in ventricular tachycardia. He was quickly cardioverted with 120 joules and converted back to his injury current type pattern. He was reboled on Amiodarone and continued on his Amiodarone drip. We asked Cardiology to see the patient who agreed with management and continued to follow him. He did well with maintaining him on the Amiodarone drip and we eventually transferred him to the Telemetry floor 2 days ago where he has continued to make steady progress. Again, he had an ST-elevation MI and a low ejection fraction, and of course in the setting of ventricular tachycardia we asked the reps with LifeVest to fit him for a device which he will wear for the next 90 days and then we will reassess him with a repeat echocardiogram 90 days after his surgery. This will be to assess his need for AICD. He was fitted for his LifeVest today. He had a repeat echocardiogram that showed improvement in his ejection fraction. The final report is pending on that. The patient continues to make steady progress. He is ambulating, voiding, having bowel movements without complaints. His wounds are clean, dry and intact. His sternum is tight.

DISCHARGE DIAGNOSTIC STUDIES: Most recent labs on the patient's chart prior to discharge show a sodium of 131, potassium 4.1, chloride 100, CO2 25, BUN 17, creatinine 0.8, glucose 100, white count 12, HGB 10.8, HCT 33, platelets 371. His troponins on admission were 4.140. Total bilirubin 0.6, direct 0.2, AST 38, ALT 81, GGTP 52, alkaline phosphatase 68. Heparin-dependent platelet antibody was negative. MRSA screening was negative. Cholesterol 125, LDL 80, HDL 23, triglycerides 109, non HDL was 102. He had been started on a statin early postop, but his LFTs were elevated and we stopped it. Urinalysis was negative. HGB A1C was 5.4.

DISPOSITION: To home.

DISCHARGE FOLLOW UP

1. Jeff Travis, MD, in 2 weeks.
2. Lanneau Lide, MD, in 4 weeks.
3. The patient will need a repeat echocardiogram in 90 days from the date of his surgery.

T: 06/07/2013 03:09 P/brb

Electronically Signed by Jeffrey Allen Travis, MD on 06/11/13 0638

Discharge Summaries signed by Victor A. Gomez, PA-C at 06/07/13 1420

Author: Victor A. Gomez, PA-C Service: (none)

Filed: 06/07/13 1420

Note Time: 06/07/13 1420

Author Physician Assistant

Type:

Cosigner: Jeffrey Allen Travis, MD at 06/08/13 0827

Discharge Summaries (- continued -)

Discharge dictated #1193644

6/7/2013, 2:20 PM

Name: Clarence Winfrey	DOB: 8/19/1962
Acct: 100004421483	Admit: 5/28/2013

Electronically signed by Gomez, Victor A.

Electronically Signed by Jeffrey Allan Travis, MD on 06/08/13 0827

ED Notes

No notes of this type exist for this encounter.

Final Diagnoses

Principal [P]	Code	Name	POA	CC	HAC	Affects DRG
	410.41	Acute myocardial infarction of other inferior wall, initial episode of care	Yes	CC		Yes
	785.51	Cardiogenic shock	Yes	MCC		Yes
	427.1	Paroxysmal ventricular tachycardia	No	CC		No
	429.71	Acquired cardiac septal defect	Yes	CC		No
	416.8	Other chronic pulmonary heart diseases	Yes			
	287.5	Thrombocytopenia, unspecified	Yes			
	414.01	Coronary atherosclerosis of native coronary artery	Yes			
	401.9	Unspecified essential hypertension	Yes			
	994.8	Electrocution and nonfatal effects of electric current	Yes			
	E925.9	Accident caused by unspecified electric current	Yes			
	E849.3	Place of occurrence, industrial places and premises	Exempt from POA reporting			
	E000.0	Civilian activity done for income or pay	Exempt from POA reporting			
	305.1	Tobacco use disorder	Yes			
	305.00	Alcohol abuse, unspecified	Yes			

Discharge Information - Patient Record Only

Discharge Date/Time	Discharge Disposition	Discharge Destination	Discharge Provider	Unit
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Generated on 6/24/2013 9:10 AM

Patient: Winfrey, Clarence B (MR#M002010261) Printed by HARLEY, SHARON D [51... Page 1 of 2

Winfrey, Clarence B (MR # M002010261)

Patient Information		
Patient Name	Sex	DOB
Winfrey, Clarence B	Male	

Op Note signed by Jeffrey Allen Travis, MD at 05/30/13 0650					
Author:	Jeffrey Allen Travis, MD	Service:	(none)	Author	Physician
Filed:	05/30/13 0650	Note	05/29/13 2002	Type:	
Trans	Available	Time:		Trans ID:	3M927377
Status:					
Dictation	05/29/13 2002	Trans	05/30/13 0342	Trans	Operative Note
Time:		Time:		Doc	
				Type:	

DATE OF PROCEDURE: 05/29/2013

PREOPERATIVE DIAGNOSIS

1. Acute myocardial infarction.
2. Electrocutation.
3. Acute post myocardial infarction ventricular septal defect.
4. Severe pulmonary hypertension.
5. Cardiogenic shock.

POSTOPERATIVE DIAGNOSIS: Same.

PROCEDURE PERFORMED

1. Repair of post infarct VSD.
2. Coronary artery bypass grafting x1 with saphenous vein graft to the ramus intermedius.
3. Percutaneous placement of intraaortic balloon pump.

SURGEON: Jeffrey A. Travis, MD

ASSISTANTS: Steven W. Marra, MD, and Victor Gomez, PA-C

ANESTHESIA: General endotracheal.

DESCRIPTION OF PROCEDURE: The patient was brought to the Operating Room and placed supine on the Operating Room table. After appropriate monitors were placed, general anesthesia was induced. The patient's chest, abdomen, and lower extremities were prepped and draped and isolated into a sterile field. We made a midline incision over the chest and carried down to subcutaneous tissues using electrocautery. A median sternotomy was performed. Thymus gland was taken down to the level of the innominate vein. The greater saphenous vein was harvested from the left lower extremity using endoscopic techniques. It was dilated and found to be adequate for grafting. We opened up the pericardium and tacked up as a pericardial well. The patient was systemically heparinized. The ascending aorta was normal to palpation. The ascending aorta was cannulated using a 20-French

Winfrey, Clarence B (MR # M002010261) Printed by Sharon D Harley [5173] at 6/26/13. 10:00 AM

Patient: Winfrey, Clarence B (MR#M002010261) Printed by HARLEY, SHARON D [51... Page 2 of 2

Winfrey, Clarence B (MR # M002010261)

arterial flow cannula. We put dual stage venous cannulas in, although we had a difficult time directing the SVC cannula in the correct location. We could not pass a coronary sinus catheter despite multiple attempts. We placed an ascending aortic root vent. We did have to crash on bypass due to severe hemodynamically compromise. The patient also had very significant pericarditis with large calcific plaques located anteriorly and posteriorly. These were unlike soldier plaques. They were heavily calcified and there was a real weirdness to the adhesions throughout. At this time, after going on bypass, we cross clamped the ascending aorta and arrested the heart with warm antegrade blood cardioplegia. With the heart completely arrested, we gave cold antegrade blood cardioplegia and gave this at 20-minute intervals throughout the case. We begun the procedure by dissecting out the ramus intermedius. It was tested under pressure and found to be hemostatic. We then positioned the heart and exposed the base of the heart, the large infarct in the posterior descending coronary artery. The LV was opened along the long longitudinal incision, and this was obviously white infarcted tissue. This was () into the infarct for this tissue. We were able to identify the VSD, which was kind of basilar and apical in location. We placed multiple pledgeted sutures, affixing a patch to cover the left ventricular side of this, and then brought that patch out of the ventriculotomy. It was sutured into place circumferentially with pledgeted sutures and then a running suture was also added to make it watertight. At this time, we closed the ventriculotomy using 2 long strips of felt along either side, sewing 1st with a 4-0 Prolene and then with a 2-0 Ticron on an MH needle. We placed several buttressing sutures and also placed BioGlue over this. At this time, we turned our attention to the ascending aorta and created a 4.8-mm punch in the ascending aorta. The vein graft was anastomosed to the ascending aorta using 6-0 Prolene. The heart was de-aired. Cross clamp was removed. At this time, we placed a percutaneous intraaortic balloon pump through the right femoral artery using ultrasound guidance. We began ventilating the patient. We placed atrial and ventricular pacing wires. We weaned the patient from bypass. Initially he separated from bypass but had some hemodynamic compromise, and we went back on bypass. Echo initially looked very good, and the ventricular function waned over the first few minutes off bypass. It appeared that perhaps the patient got some air. We gave 10 minutes of wait time and then re-separated from bypass without difficulties. Ventricular function was good. There was no evidence of VSD. At this time, both venous cannulas were removed. The defect was repaired with the previously placed pursestring suture. Protamine sulfate was administered to reverse the heparin, and the ascending aortic root vent was removed. The defect was repaired with the previously placed horizontal mattress pledgeted suture. At this time, with hemostasis adequate, the ascending aortic cannula was removed. The defect was repaired with the previously placed horizontal mattress pledgeted suture. Hemodynamics and hemostasis were adequate. Chest was closed using #6 sternal wire and a Pioneer Cable system. The wound was closed in layers. A sterile dressing was applied. The patient was transported to the Intensive-Care Unit in satisfactory condition.

T: 05/30/2013 03:42 A/cir

Winfrey, Clarence B (MR # M002010261) Printed by Sharon D Harley [5173] at 6/26/13 10:00 AM

WORKERS COMPENSATION QUESTIONNAIRE

Please indicate your medical opinion by choosing one of the options below.

☒ IT IS MY OPINION that to a reasonable degree of medical certainty (more likely than not) the symptoms and injuries that I have treated Mr. Winfrey for are a result of his work related accident on May 22, 2013, which occurred while he was working on a rotisserie when he accidentally came into contact with an exposed wire carrying 480 volts sending a severe electric shock through his left hand and arm injuring his heart.

☐ IT IS NOT MY OPINION that to a reasonable degree of medical certainty (more likely than not) the symptoms and injuries that I have treated Mr. Winfrey are a result of his work related accident on May 22, 2013, which occurred while he was working on a rotisserie when he accidentally came into contact with an exposed wire carrying 480 volts sending a severe electric shock through his left hand and arm injuring his heart.

K Greenfield MD 9-17-13
Karen J. Greenfield, M.D. Date
G

100
Rm. 1

DOCTORS
Care

ACCOUNT NUMBER: 665500 DATE: 05/28/13 TIME: 08:35am CHECKOUT TIME: 10:28 TICKET NO: 103635

NAME & ADDRESS: WINFREY, CLARENCE DOB: (50 years) GENDER: M

INSURANCE BALANCE: 10.00 ACCOUNT BALANCE: 10.00 CURRENT CHARGES: AMOUNT PAID: NEW BALANCE: 10.00

IBG: CELL: RELATION: SELF

INSURED: WINFREY, CLARENCE INS: WKC REASON: NECK PAIN (shocked by 480 volts, jerked down to shoulder) NICKNAME: (down to shoulder) COPAY: SP

Personal Hx: DM HTN Family Hx: DM HTN Social Hx: Alcohol Tobacco BOS (1 or 0): Fatigue, Dizzy, Weak, Wt. Loss, Fever, Chills, Nasal Congestion, Sinus Pain, Ear Pain, Sore Throat, SOB, CP, Cough, Sputum, Wheeze, ABD Pain, N, V, D, Constip., Dysuria, Freq., Urgency, Back Pain, Pelvic Pain, Vag. D/C, Headache, Syncope, Rash Allergies: NKDA Medications: Tylenol / Ibuprofen Motrin

Accident? ☐ yes ☐ no If yes, which state: Prev. chart rev. no sig chg. Above Hx rev. 10

AT 239.4 HT BMI BRZ 128 PULSE 200 TEMP 97.5

PHYSICAL: (see reverse) Omit if N/A (✓ if nml. O if abnml. & give details)

General: ☐ HEENT: ☐ Neck: ☐ Nodes: ☐ Lungs: ☐ CV: ☐ Abd: ☐ Back: ☐ Ext: ☐ GU: ☐ Nouro: ☐ Skin/Chests: ☐ Chaperone: ☐ IV: ☐ Injection: ☐ Nebulizer: ☐ Procedure: ☐ Pulse Ox:

Chief Complaint: 480 V ratissire shock on Thursday sweatier than PM. wake up sweating this AM. no pain @ neck no chest pressure

DIAGNOSIS: Tachycardia / electrical shock / munde shock

CRITCHER/SPLINTS/SUPPLIES: ☐ Given ☐ Recommended

PSR Notes: 99283-1101 NEW 81001-25 93000-20

Return: ☐ Worsening symptoms: ☐ If not better: Go to ER if:

Off Work / School: K. Krenfield

1. I voluntarily consent to any and all health care treatment and diagnostic procedures provided by Doctors Care and its associated physicians, clinicians and other personnel. I am aware that the practice of medicine and other health care professions is not an exact science and I further state that no guarantee has been or can be made as to the results of the treatment or examinations at Doctors Care.

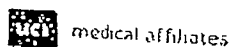
2. I consent to the use and disclosure of my patient's protected health information for purposes of obtaining payment for services rendered to me, the patient, treatment and health care operations consistent with the Doctors Care Notice of Privacy Practices.

3. I authorize payment of medical benefits to Doctors Care physicians or their designee for services rendered.

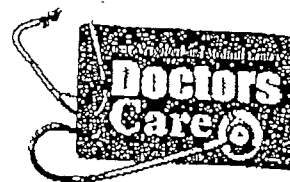
Patient or Authorized Person's Signature: Date: 7-28-2013

4. Workers Compensation patients: I hereby authorize Doctors Care to speak to a rehabilitation specialist, my employer, my insurance carrier or other professionals involved in my care or rehabilitation, regarding my medical records and the treatment I have received or will receive.

Patient or Authorized Person's Signature: Date:



Laboratory Report



☐ STAT
☐ WAITING
☐ NOT WAITING

Last Name <u>Winfrey</u>	First Name <u>Clarence</u>	Date <u>5-28-13</u>	Time <u>10:30</u>	Provider <u>163</u>
Medical Record # <u>062509</u>	D-O-B <u>50</u>	Age <u>M</u>	Sex <u>shock - electrical</u>	

URINALYSIS

ROUTINE	
Color	<u>amber</u>
Appearance	<u>clear</u>
Glucose (neg)	
Bilirut	
Keton	
Sp. Gr	<u>1.030</u>
Blood	
pH (5.0)	
Protei	
Urobil	
Nitrite	
Leuko	

MICROSCOPIC	
WBC (0-3/hpf)	
RBC (0-3/hpf)	
Epith.	
Casts (neg)	
Crystals	
Bacteria	
Amorphous	
Mucous	

CHEMISTRY	
Glucose mg/dl	
70 - 115 mg/dl	
☐ Fasting	☐ Random
☐ Venous	☐ Finger stick

WET PREP - KOH	
Trichomonas (neg)	
Yeast (neg)	
Clue Cells (neg)	
WBC (0 to 3)	
Epithelial (0 to 3)	
Bacteria (trace)	

MISCELLANEOUS	
Mono Test (neg)	
Urine HCG	
Hemocult (neg)	
☐ 1 slide	☐ 2 Slides
☐ Home kit	
H. Pylori (neg)	
Microalbumin (neg)	
HGBAIC (3.9-6.5)	
Rapid Strep A (neg)	

Doctors Care Seven Oaks
 100 Jimmy Love Lane
 Columbia, SC 29212
 CLIA #4200694394

OTHER LABS	

Collected By	Time	Performed By	Time
Phoned To	Time	Reviewed By	Date
		<u>K. Kneufeld MD</u>	<u>5-28-13</u>

Winfrey, Clarence
ID: 662509

05/28/2013 9:44:36

*** CONSIDER ACUTE ST ELEVATION MI ***

Sinus tachycardia

Possible left atrial abnormality

Right bundle branch block

Inferior ST elevation, CONSIDER ACUTE INFARCT

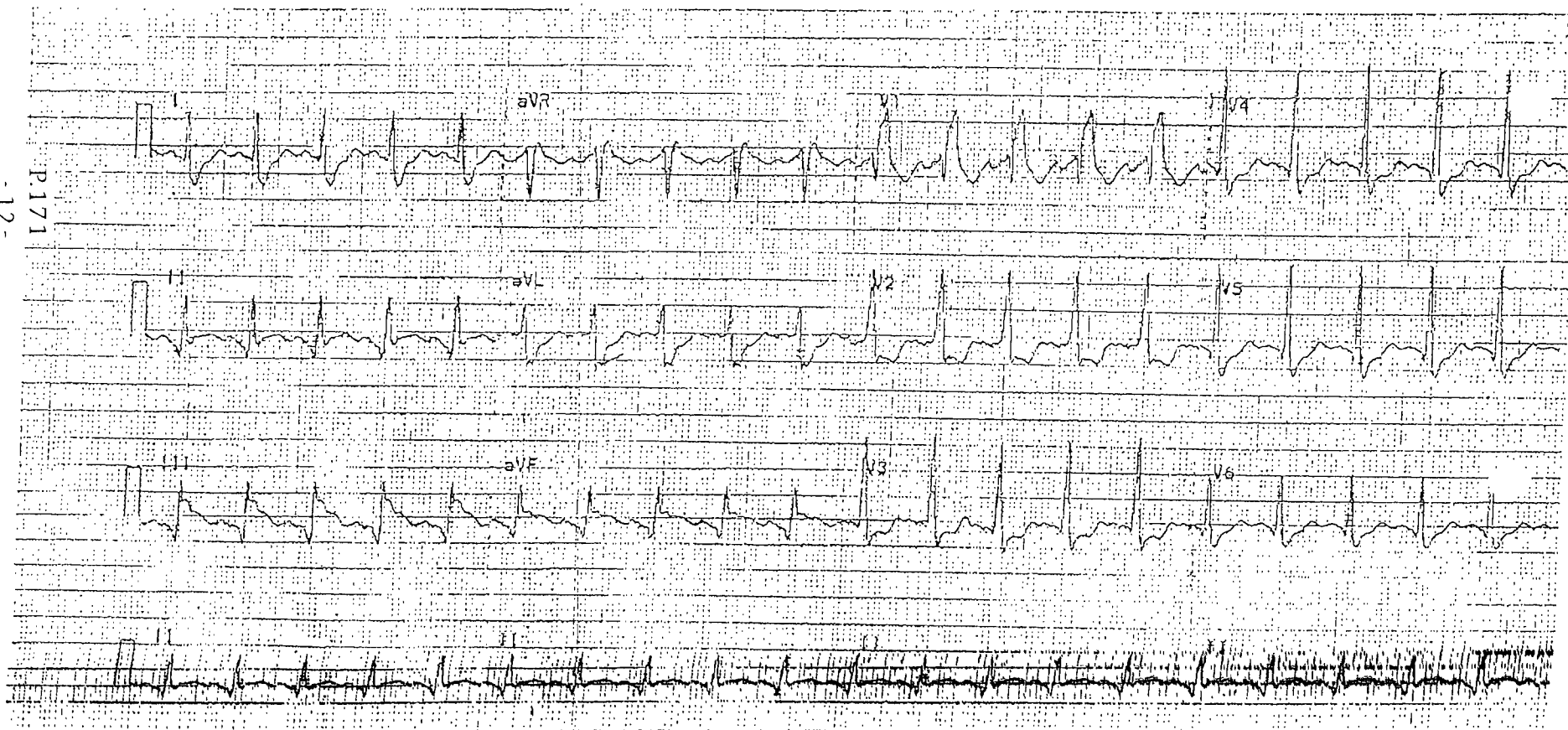
Lateral ST-T changes suggest myocardial injury/ischemia

Abnormal ECG

* Unconfirmed Analysis *

D.O.B.:	Vent. Rate:	122 bpm
MALE	PR Interval:	490 ms
Tach: JJ	PR Interval:	184 ms
	QRS Duration:	160 ms
	QT Interval:	328 ms
	QTc Interval:	436 ms
	QT Dispersion:	68 ms
	P-R-T AXIS:	52° 70° 81°

Greenfield, MD



12-
P171
L: 10 mm/mV
C: 10 mm/mV

OTC-Hodges

25 mm/s
STABLE 40 Hz

JUL-19-2013 14:15 From: UCI-Med
line Dept B03 376 4335
To: 3709

Re: S/10

Winfrey, Clarence
ID: 662509

05/28/2013 9:44:54

*** CONSIDER ACUTE ST ELEVATION MI ***

Sinus tachycardia

Possible left atrial abnormality

Right bundle branch block

Inferior ST elevation, CONSIDER ACUTE INFARCT

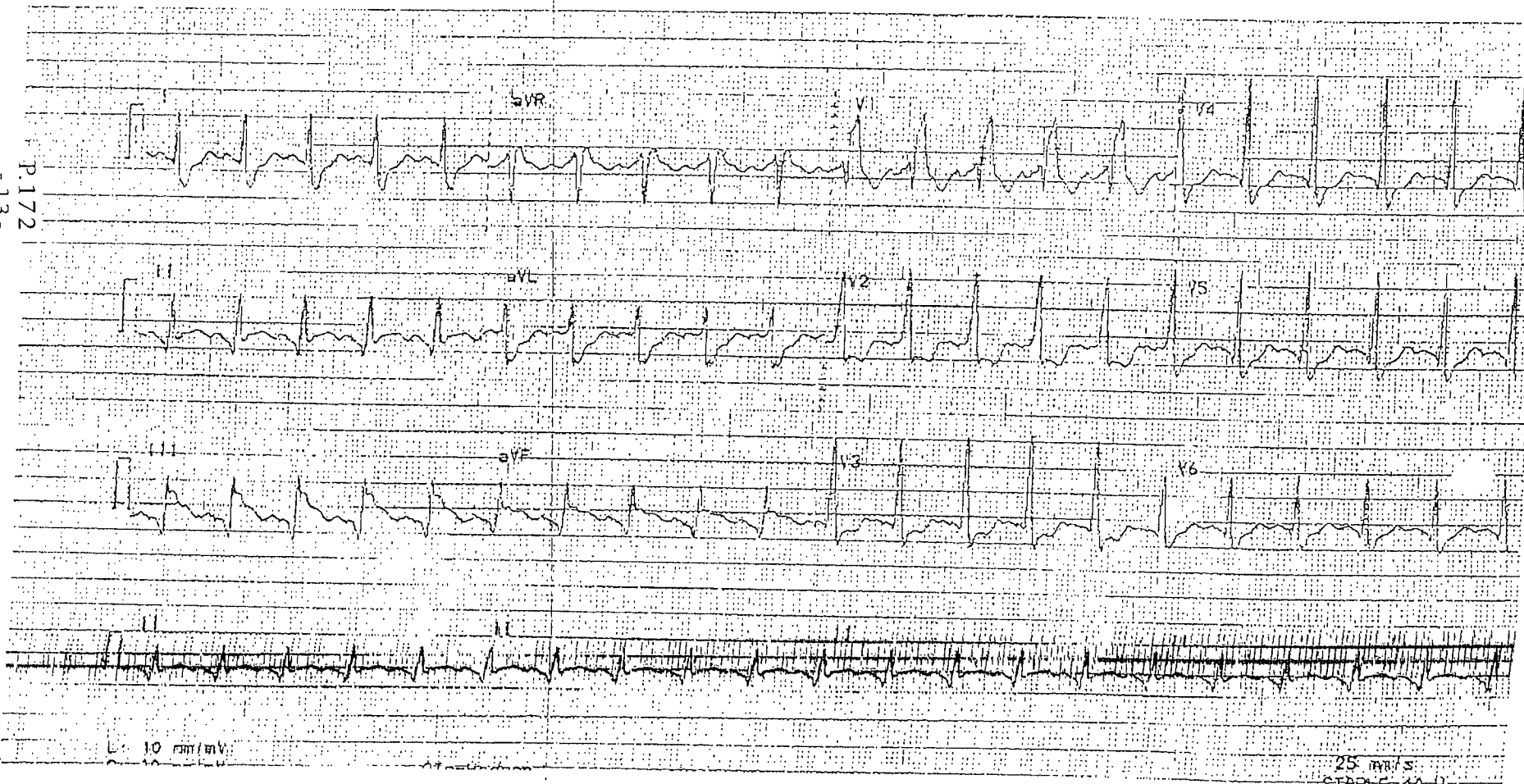
Lateral ST-T changes suggest myocardial injury/ischemia

Abnormal ECG

* Unconfirmed Analysis *

Winfrey

D.O.B.: 50	Vent. Rate: 123 bpm
MALE	RR Interval: 485 ms
Tech: JJ	PR Interval: 180 ms
	QRS Duration: 162 ms
	QT Interval: 332 ms
	QTc Interval: 442 ms
	QT Dispersion: 70 ms
	P-R-T AXIS: 52° 69° 80°



10 mm/mV

25 mm/s



Return To Work Form

CENTER LOCATION:

☐ Aiken Mall - 850 Aiken Mall Drive, Aiken, SC 29803 - (803) 648-1464
☐ Augusta Road - 2836 Augusta Road, West Columbia, SC 29170 - (803) 939-0545
☐ Beltline - 511 Beltline Boulevard, Columbia, SC 29205 - (803) 782-4031
☐ Cayce - 977 Knox Abbott Drive, Cayce, SC 29033 - (803) 794-0476
☐ City of Columbia - 2012 Harder Street, Ste. 112, Columbia, SC 29204 - (803) 231-3122
☐ Columbia East - 7653 Gamers Ferry Road, Columbia, SC 29209 - (803) 783-2661
☐ Forest Acres - 4504 Forest Drive, Suite A, Columbia, SC 29206 - (803) 738-0522
☐ Lexington - 247 Columbia Avenue, Lexington, SC 29072 - (803) 359-5533
☐ Newberry - 1410 Wilson Road, Newberry, SC 29108 - (803) 276-2186
☐ North Aiken - 1029 York Street NE, Aiken, SC 29801 - (803) 648-4119

☐ North Augusta - 1520 Knox Avenue, North Augusta, SC 29841 - (803) 279-4120
☐ Northeast - 10040 Two Notch Road, Columbia, SC 29223 - (803) 788-4153
☐ Orangeburg - 1748 St. Matthews Road, Orangeburg, SC 29118 - (803) 536-0613
☐ Red Bank - 1847 South Lake Drive, Lexington, SC 29073 - (803) 358-0938
☐ Ridgeview - 4214 Hardacre Road, Columbia, SC 29223 - (803) 358-0955
☒ Seven Oaks - 100 Jimmy Love Lane, Columbia, SC 29212 - (803) 730-9100
☐ Sumter - 2475 Broad Street, Sumter, SC 29150 - (803) 778-6555
☐ Wateree - 1060 Highway 1 South, Lugoff, SC 29078 - (803) 438-9779
☐ West Columbia - 3240 Sunset Blvd, West Columbia, SC 29169 - (803) 796-4251

PATIENT INFORMATION:

Name: Clarence Winfrey Arrival Time: 9:35 Discharge Time: _____
 Date: 5-28-13 Company Name: _____

WORK STATUS: (Check Appropriate Boxes)

- ☐ 1. May perform full duty activities as of _____ without accommodations.
☒ 2. Off duty due to work-related condition.
 Estimated return to work date with modified duty: _____
 Estimated return to work date for full duty: _____
 Return for re-evaluation at this location on _____ Time: _____
☐ 3. May work with the following accommodations as of _____ Time: _____
- ☐ No lifting more than _____ lbs.
 - ☐ No operation of hazardous or fast-moving machinery, no driving.
 - ☐ Ground level work only, no ladders or heights.
 - ☐ No repetitive bending, stooping, squatting, pushing, jacking, twisting, or bouncing.
 - ☐ No continuous standing and/or sitting.
 - ☐ Minimal walking or climbing (including stairs).
 - ☐ Limited use of _____
 - ☐ No overhead lifting.
 - ☐ No high repetitive hand activities for extended periods of time.
 - ☐ No use of _____
- ☐ 4. Has reached Maximum Medical Improvement (MMI)
☐ 5. Return for re-evaluation at this office on _____ Time: _____

Additional Comments: _____ Time: _____

PATIENT DISCHARGE INSTRUCTIONS:

Diagnosis: Cardiac arrhythmia Medications: ☐ as directed ☐ as needed
 Wound or Injury Care: ☐ keep dry and clean ☐ do not remove dressing ☐ elevate extremity ☐ warm soaks
☐ ice every _____ ☐ apply heat every _____
☐ home exercise instructions given ☐ follow instructions sheet given ☐ bed rest for _____

REFERRAL: (If a referral is made for physical therapy, or to another physician, please complete this section.)

To: Dr Dasgupta Date: _____ Time: _____
 For: arrhythmia
 Address: _____

I understand the above instructions and what to do for my follow-up care. I have received a copy of these instructions for myself and for my employer.

Employee Signature: [Signature] Date: 5-28-13 X
 Provider Signature: [Signature] Date: _____

05/28/2013 09:09

7044874

ARCHWAY SERVICE

PAGE 01/02

APR-15-2013 05:01 From:DRS CARE SEVEN OAKS 803 551 5477

To:17044879999

Page:1/1

****COMPLETE AND FAX BACK TO 803-551-5477******Employer Authorization Form**

Complete this form and fax or bring to your Doctors Care Center

Patient Name: Clarence Winfrey Date: 5-28-2013
Company: Archway Service Contact/Phone: 704-487-4505 Fax: 704-487-4721
Company Address: 2316 Kings Rd Extension BT Account #: _____
Temporary Staffing Agency: N/A Contract/Phone: N/A

REQUIRED SERVICES (check all that apply)**Work Related**☒ Worker's Compensation Injury TreatmentDate of Injury: 5-23-2013Type of Injury: thrust neck☐ Post-accident Drug Screen required**Drug Screen/Breath Alcohol Testing**☐ Drug Screen☐ NIDA (check agency below)GO Agency: ☐ AMCSA ☐ JTA ☐ PAMSA☐ PAA ☐ TNA ☐ USCG☐ Non-NIDA (SN in test code below)☐ 5 Panel ☐ 9 Panel ☐ 10 Panel☐ 7 Panel ☐ Other _____☐ Urinary☐ Breath Alcohol☐ NIDA ☐ Non-NIDA**Physical Examination**☐ DOT Physical☐ Pre-Employment PE☐ Respirator Clearance PE☐ Physical (Other): _____

Specify: _____

Special Examination☐ Audiogram☐ Blood Lead Level☐ Chest X-ray☐ Hepatitis B Immunization☐ Hepatitis B Profile☐ Spirometry with Letter☐ PPD (TB test)☐ Tetanus☐ Flu Shot☐ Other: _____☐ Other: _____☐ Other: _____☐ Other: _____**REQUIRED FOR ALL WORKER'S COMPENSATION CLAIMS:**Has Employer filled out First Report of Injury? ☐ Yes ☒ No (send copy if available)

Where are claims to be filed?

☒ Employer ☐ CarrierWC Carrier: Montgomery Ins. Liberty Mutual Phone #: _____

Address: _____

City: _____

State: _____

Zip: _____

This Certifies that the above information is correct.
I authorize the medical provider to provide medical treatment to the employee named above.

Signature of Company Authorization Number

Printed Name: Susan M. Kiser

Date

5-28-2013

Position Title

Bookkeeper**For Internal Use Only**

Form Completed By

Initials

Contact Name

Date

05/28/2013 09:00

7044874701

ARCHWAY SERVICE

PAGE 02/02

ACORD WORKERS COMPENSATION - FIRST REPORT OF INJURY OR ILLNESS											
EMPLOYER (NAME & ADDRESS INCL. ZIP) Archway Service, Inc 2316 Kings Road Extn. Shelby, NC 28152 (800)868-3278 (704)487-4721				CARRIER/ADMINISTRATOR CLAIM NUMBER		REPORT NUMBER					
SIG CODE		EMPLOYER FEIN 510663955		JURISDICTION		JURISDICTION CLAIM NUMBER					
				INSURED REPORT NUMBER							
				EMPLOYER'S LOCATION ADDRESS (IF DIFFERENT)				LOCATION # PHONE #			
CARRIER/CLAIMS											
CARRIER (NAME, ADDRESS & PHONE NO) Montgomery Insurance Company Toll Free Express Reporting 1-800-561-0178 Fax Claims Reporting 1-888-854-2329 Glass Claims 1-800-835-2257				POLICY PERIOD 09/12/2012 09/12/2013		CLAIMS ADMINISTRATOR (NAME, ADDRESS & PHONE NO)					
				CHECK IF APPROPRIATE SELF INSURANCE							
CARRIER FEIN		POLICY/SELF-INSURED NUMBER XWAS5266239				ADMINISTRATOR FEIN					
AGENT NAME & CODE NUMBER Peoples First											
EMPLOYEE/WAGE											
NAME (LAST, FIRST, MIDDLE)				DATE OF BIRTH		SOCIAL SECURITY NUMBER		DATE HIRED		STATE OF RES.	
ADDRESS (INCL. ZIP)				SEX ☐ MALE ☐ FEMALE ☐ UNKNOWN		MARITAL STATUS ☐ UNMARRIED ☐ SINGLE/DIVORCED ☐ MARRIED ☐ SEPARATED ☐ UNKNOWN		OCCUPATION/JOB TITLE		EMPLOYMENT STATUS	
PHONE				# OF DEPENDENTS				NCCI CLASS CODE			
RATE PER: DAY MONTH WEEK OTHER				# DAYS WORKED/ WEEK		FULL PAY FOR DAY OF INJURY?		YES		NO	
						DID SALARY CONTINUE?		YES		NO	
OCCURRENCE/TREATMENT											
TIME EMPLOYEE BEGAN WORK		DATE OF INJURY/ILLNESS		TIME OF OCCURRENCE		LAST WORK DATE		DATE EMPLOYER NOTICED		DATE DISABILITY BEGAN	
CONTACT (NAME/PHONE NUMBER)		TYPE OF INJURY/ILLNESS				PART OF BODY AFFECTED					
DID INJURY/ILLNESS EXPOSURE OCCUR ON EMPLOYER'S PREMISES?				TYPE OF INJURY/ILLNESS CODE				PART OF BODY AFFECTED CODE			
DEPARTMENT OR LOCATION WHERE ACCIDENT OR ILLNESS EXPOSURE OCCURRED				ALL EQUIPMENT, MATERIALS, OR CHEMICALS EMPLOYEE WAS USING WHEN ACCIDENT OR ILLNESS EXPOSURE OCCURRED							
SPECIFIC ACTIVITY THE EMPLOYEE WAS ENGAGED IN WHEN THE ACCIDENT OR ILLNESS EXPOSURE OCCURRED				WORK PROCESS THE EMPLOYEE WAS ENGAGED IN WHEN ACCIDENT OR ILLNESS EXPOSURE OCCURRED							
HOW INJURY OR ILLNESS/ABNORMAL HEALTH CONDITION OCCURRED. DESCRIBE THE SEQUENCE OF EVENTS AND INCLUDE ANY OBJECTS OR SUBSTANCES THAT DIRECTLY INJURED THE EMPLOYEE OR MADE THE EMPLOYEE ILL										CAUSE OF INJURY CODE	
DATE RETURNED TO WORK		IF FATAL, GIVE DATE OF DEATH		WERE SAFEGUARDS OR SAFETY EQUIPMENT PROVIDED?		YES		NO			
PHYSICIAN/HEALTH CARE PROVIDER (NAME & ADDRESS)		HOSPITAL (NAME & ADDRESS)		WERE THEY USED?		YES		NO			
WITNESSES (NAME & PHONE #)								INITIAL TREATMENT			
								☐ NO MEDICAL TREATMENT			
								☐ MINOR BY EMPLOYER			
								☐ MINOR CLINIC/OP			
								☐ EMERGENCY CARE			
								☐ HOSPITALIZED - 24 HRS			
								☐ FUTURE MAJOR MEDICAL			
								☐ LOST TIME AND/OR			
DATE ADMINISTRATOR NOTIFIED		DATE PREPARED		PREPARED BY NAME & TITLE		PHONE NUMBER					

ACORD 4 (7/97)

SEE BACK FOR IMPORTANT STATE

P.175

WITH PERMISSION OF IAABC

© ACORD CORPORATION 1993



Initial Report

Claim Number: 22209963 Date of Assignment: 26-Jun-2013
Claimant Name: Clarence Winfrey
RN Name: Kristy Thompson RN, BA, Report Date: July 22, 2013
BS, BSN
Diagnosis: ICD-9 Code(s):
Target RTW Date: Treating Provider: Lexington Cardiovascular

Treatment History: Claimant underwent heart surgery on May 29, 2013 as a result of an MI caused by electrical shock.

Medications: Metoprolol 25mg
Aspirin 81mg
Plavix 75mg
Amiodarone 200mg
Altace 5mg
Lasix 80mg
Vitamin C
Pepcid 20mg

Current Medical Status: Claimant is treating with Dr. Lide with South Carolina Heart Center and Dr. Travis, Cardiothoracic surgeon with Lexington Cardiology since suffering MI.

Provider Treatment Plan: On Monday 7.15.13, Mr. Winfrey met with Dr. Lide. Mr. Winfrey had a lot of fluid retention in his lungs as well as his legs. Dr. Lide placed him on a diuretic and obtained some lab work and scheduled him to come back in on Tuesday for an EKG. Tuesday morning, Mr. Lide's weight had dropped from 239 on Monday to 221. Dr. Lide informed him that he wanted him to take about 10lbs more of fluid off and increased his BP medications and instructed Mr. Lide to return Thursday for addition blood work and come in on Friday for a follow up visit. He also d/c'd Mr. Winfrey's physical therapy for now due to the visible shortness of breath. On Tuesday, Mr. Lide also had an appointment with Dr. Travis. On that visit Dr. Travis advised Mr. Winfrey not to take the Lasix and the BP meds because his BP was 77/60. I called Dr. Lide's office and advised them of this. Dr. Travis also indicated that Mr. Winfrey is healing well. Mr. Winfrey had a lot of pain when Dr. Travis assessed the surgical site but otherwise everything looked good. I spoke with Dr. Lide's office again the morning 7.18.2013, and they made some more changes to his meds and placed BP parameters regarding taking the medication.

On Friday's visit, Dr. Lide reviewed Mr. Winfrey's medication and requested an EKG. Dr. Lide advised Mr. Winfrey to take Lasix 80mg once daily and to take 25mg of Metoprolol 2x a day and increased his Altace to 5mg daily and added Spironolactone to his medication. Because of the problems with his BP, Dr. Lide requested Mr. Winfrey come in next week for an appointment and additional blood work.

Current Work Status: () Full Duty? () Modified Duty? ☒ Out of Work?
Physical Requirements of Regular Job: Claimant works as an electrician.
Modified Duty Available? () Yes? () No?
Physical Requirements of Modified Duty Available: N/A

Information Obtained:

Activity Date: 28-Jun-2013 - 22-Jul-2013

Activity Date	Activity Note
6/28/2013	Introduction email to adjuster.



7/1/2013	Phone call to claimant's attorney, message left.
7/1/2013	Contact approval letter sent to attorney.
7/2/2013	Two copies of the GENEX introduction letter and grievance policy were sent to Attorney McDaniel, one for his file and a second copy to be provided to Mr. Winfrey at his discretion.
7/8/2013	Phone call to SCHC to confirm appointment. Advised that claimant had 10:45am with Dr. Lide, advised that I was case manager and would be attending appointment with claimant.
7/15/2013	Case Manager Geneva Bookman accompanied Mr. Winfrey to the 10:45 am cardiology evaluation where following a lengthy wait the Claimant was sent into an examination room before an addition wait before being examined privately by Dr. Lide.
7/15/2013	After another lengthy wait Case Manager Geneva Bookman was allowed to speak with Dr. Lide via his Clinical Assistant while Mr. Winfrey was being prepared for blood-work. Dr. Lide advised
7/15/2013	Phone call to SCHC to confirm which location appointment is at.
7/16/2013	Travel.
7/16/2013	Mileage.
7/16/2013	Wait.
7/16/2013	Mr. Lide's weight had dropped from 239 on Monday to 221. Dr. Lide informed him that he wanted him to take about 10lbs more of fluid off and increased his BP medications and instructed Mr. Lide to return Thursday for addition blood work and come in on Friday for a follow up visit. He also d/c'd Mr. Winfrey's physical therapy for now due to the visible shortness of breath.
7/16/2013	Phone call to Dr. Travis office to confirm appointment and confirm address and directions.
7/16/2013	Travel.
7/16/2013	Mileage.
7/16/2013	Wait.
7/16/2013	Dr. Travis advised Mr. Winfrey not to take the Lasix and the BP meds prescribed by Dr. Lide tonight because his BP was 77/60. I called Dr. Lide's office and advised them of this. Dr. Travis indicated that Mr. Winfrey is healing well. Mr. Winfrey had a lot of pain when Dr. Travis assessed the surgical site but otherwise everything looked good. Dr. Travis was advised that Mr. Winfrey was no longer in PT as recommended by Dr. Lide.
7/16/2013	Email update to adjuster.
7/16/2013	Email update to claimant's attorney.
7/16/2013	Message left for adjuster to call regarding claimant's appointments and approval for BP machine.
7/16/2013	Phone call to Liberty Mutual advising that my emails are not reaching adjuster and given alternative email address.
7/17/2013	Travel to claimant.
7/17/2013	Mileage.
7/17/2013	Well check visit with claimant to assess his medications and any side effects. Initial assessment completed. Confirmed claimant's upcoming appointments.
7/18/2013	File staffed via telephone w/assigned Field Case Manager (FCM) Kristy Thompson. Client is status post heart surgery on 5/29/13 and had several office visits this week (week of 7.15.13) w/treating cardiologist. In addition, FCM Thompson made a home visit this week for purposes of patient education and client's blood pressure concerns. All case management activities thus far are appropriate to case status. Debra B. Gray, Case Management Supervisor
7/18/2013	Message left by Tammy regarding claimant's BP medication and indicated she would call claimant at well.
7/18/2013	Phone call to Mr. Winfrey to make sure that Dr. Lide's office called him. Confirmed his appointment for Friday and assessed whether he was experiencing any side effects or increased SOB and he denied.
7/18/2013	Introductory letter sent to Dr. Lide explaining my involvement.
7/18/2013	Introductory letter to Dr. Travis explaining my role.
7/18/2013	Phone call to adjuster, unable to leave a message.



7/18/2013	Phone call to Liberty Mutual advising that I am unable to contact adjuster, advised at that time that Rebecca is no longer with Liberty Mutual and new adjuster would be Ruth Schmitt, message left for new adjuster.
7/19/2013	Travel.
7/19/2013	Wait.
7/19/2013	Dr. Lide reviewed Mr. Winfrey's medication and requested an EKG. Dr. Lide advised Mr. Winfrey to take Lasix 80mg once daily and to take 25mg of Metoprolol 2x a day and increased his Altace to 5mg daily and added Spironolactone to his medication. Because of the problems with his BP, Dr. Lide requested Mr. Winfrey come in next week for an appointment and additional blood work. Dr. Lide wrote a prescription for BP monitor and a scale.
7/21/2013	Mileage.
7/22/2013	Initial Report.

Assessment:

Claimant is a 50 year old man that suffered an electrical shock on May 22, 2013. As a result of the shock, claimant suffered a myocardial infarction and underwent heart surgery on May 29, 2013. Prior to injury, claimant not taking medication and since injury, claimant taking multiple medications and medication management needed.

A home visit was made during this report period for purposes of client teaching/safety in regards to medications and physician orders.

Case Management Action Plan:

Goals	Completed Date	Target Date
STG: Claimant will verbalize understanding of Case Manager Role & Responsibilities Disclosure		10/31/2013

Issue	Date Identified	Date Resolved
Alteration in comfort related to fluid overload.	7/15/2013	
Identification of complex medical issues	7/16/2013	

Action Plan:

Attend follow up appointment with Dr. Lide on 7.27.13
 Obtain Medical notes
 Maintain weekly contact with claimant
 Provide updates to all parties

Kristy Thompson

Submitted By: Kristy Thompson RN, BA, BS, BSN
 Title: Case Manager - Medical
 Phone #: (704) 503-4775, Ext. 3698
 Email: kristy.thompson@genexservices.com

Debra Gray

Supervised By: Debra Gray, M.Ed., CRC, CCM
 Title: Supervisor - CM

KT/dng

CC: Preston Daniel

Kim Hinkle

From: Thompson, Kristy <Kristy.Thompson@genexservices.com>
Sent: Wednesday, August 07, 2013 6:01 PM
To: Kim Hinkle
Cc: Hughes, Terri
Subject: Re: Clarence Winfrey

Terri,

The consent was mailed to Mr. Winfrey. I will print another form and have Mr. Winfrey sign it and forward it to you.

Sent from my iPhone

On Aug 7, 2013, at 5:41 PM, "Kim Hinkle" <kim@pfmcdlaw.com> wrote:

Ms. Hughes:

Mr. McDaniel stated that he would have no problem with Mr. Winfrey signing a HIPPA Medical Release if Ms. Thompson presents one to Mr. Winfrey at his next appointment, as he was under the impression Mr. Winfrey had already signed one for Ms. Thompson.

By copy of this email to the rehab nurse, I am notifying Ms. Thompson of this communication.

Thank you.

Kimberley T. Hinkle, Paralegal
McDaniel Law Firm
1315 Elmwood Avenue
Columbia, South Carolina 29201
T: 803-771-7211
F: 803-252-0709



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From: Hughes, Terri [<mailto:Terri.Hughes@LibertyMutual.com>]
Sent: Tuesday, August 06, 2013 1:57 PM
To: Kim Hinkle
Subject: Clarence Winfrey

Please have Mr. Winfrey sign the attached medical release. Please have him indicate all doctors, hospitals, etc he has had treatment with including Doctors prior to the injury. Thank you, Terri

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

Proudly representing injured workers
for over 25 years.

Preston F. McDaniel
Justin S. Byars
Matthew Robertson
OF COUNSEL:
Michael Johnson, P.C.

Telephone (803) 771-7211

Facsimile (803) 252-0709

July 31, 2013

VIA EMAIL - terri.hughes@libertymutual.com
AND US MAIL

Ms. Terri Hughes
Senior Claims Specialist II
Montgomery Insurance
13830 Ballantyne Corp. Place
Suite 300
Charlotte, NC 28277

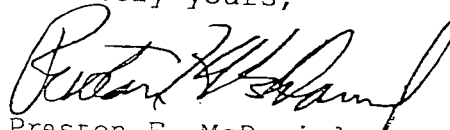
RE: Clarence B. Winfrey v. Archway Service, Inc.
WCC File No. 1306305
Claim #: 22209963

Dear Ms. Hughes:

Thank you for your prompt response. However, I was a little confused by the last two sentences in your letter and I do not know if this is something that you are used to putting into a letter in reference to the various other states that you may handle, but this case has been accepted as far as I know and I have never seen anything like "payment without prejudice and reserving any and all other defenses" in an SC case. I am just curious about that language and would like to know whether or not you have completed your investigation at this time. Of course, under South Carolina law for the first 150 days you can stop payment for various reasons but with his tenuous condition, I want to avoid any disruption of benefits and would like to know what was meant by your statement because again, I have never seen that before.

I look forward to working with you.

Sincerely yours,


Preston F. McDaniel

PFM/kth

cc: Mr. Clarence B. Winfrey P.180

Kim Hinkle

From: Kim Hinkle <kim@pfmcdlaw.com>
Sent: Wednesday, July 31, 2013 2:23 PM
To: Hughes, Terri (Terri.Hughes@LibertyMutual.com)
Subject: Clarence B. Winfrey v. Archway Service, Inc.; WCC File No. 22209963; Claim #: 22209963
Attachments: SCAN14531_000.pdf

The attached is being sent to you at the request of Preston F. McDaniel.

Kimberley T. Hinkle, Paralegal
McDaniel Law Firm
1315 Elmwood Avenue
Columbia, South Carolina 29201
Tel: 803.771.7211
Fax: 803.252.0709

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Liberty Mutual Insurance

Workers' Compensation Claims
PO Box 515099
Los Angeles, CA 90051-5099
(866) 539-6449
(877) 840-7788 Fax

July 30, 2013

McDaniel Law Firm
Attorney Preston McDaniel
1315 Elmwood Avenue
Columbia, SC 29201

VIA Email to Kim Hinkle

Re: Employee: Clarence Winfrey v Archway Service
D/I: 5/22/13
Claim# 22209963

Dear Mr. McDaniel:

I have taken over the handling of the above workers compensation claim.

I have authorized the delivery of a blood pressure monitor and weight scale through Progressive Medical. I will also reimburse Mr. Winfrey the prescriptions he paid for. I have issued Mr. Winfrey a temp total check and he is now paid up through 8/2. Payments of these items are being paid without prejudice while we are continuing our investigation of the claim. We reserve any and all other available defenses.

Sincerely,

Terri Hughes
Sr. Claims Specialist II
704-759-7750

Kim Hinkle

From: Hughes, Terri <Terri.Hughes@LibertyMutual.com>
Sent: Tuesday, July 30, 2013 1:13 PM
To: kim@pfmcdlaw.com
Subject: Clarence Winfrey
Attachments: New Letterhead.docx

Kim

I am the new adjuster. Please confirm you and Mr. McDaniel has received this letter. Thank you, Terri

McDANIEL LAW FIRM
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1315 ELMWOOD AVENUE
COLUMBIA, SOUTH CAROLINA 29201

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Preston F. McDaniel
Justin S. Byars
Matthew Robertson
OF COUNSEL
Michael Johnson, P.C.

Telephone (803) 771-7211

Facsimile (803) 252-0709

October 31, 2013

Ms. Virginia L. Crocker
Judicial Director
SC Workers Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202

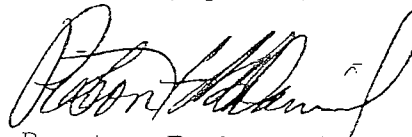
RE: Clarence B. Winfrey v. Archway Service, Inc.
WCC File No. 1306305

Dear Ms. Crocker:

Please find enclosed for filing with the Commission the original and three (3) copies of our REPLY TO MOTION FOR CONTINUANCE AND/OR POSTPONEMENT OF A SCHEDULED HEARING in the above-referenced matter. I am, by copy of this letter, serving Counsel of Record with a copy of the same.

I hope this is sufficient for filing with the Commission; however, if additional information is needed, please feel free to contact me at your convenience.

Sincerely yours,



Preston F. McDaniel

PFM/kth
Enclosures

cc: Landon L. Hughey, Esquire
Brett H. Bayne, Esquire
Commissioner T. Scott Beck

contrary to the Regulations, was only served with one copy of the letter and Form 15).

That pursuant to that same Code Section, SC Code §42-9-260(C), the Claimant has the right and did file for a hearing to have those payments reinstated which is pending before the Commission. That subsection also provides that, "the hearing must be held within sixty (60) days of the date of the employee's request for a hearing." (Emphasis added).

5. That while this Commission has jurisdiction to determine all questions arising under the Act, this Commission has absolutely no jurisdictional authority, whether that be general or by Statute, to determine the constitutionality of the Statute or any Statute of the Workers' Compensation Act. Administrative Law Courts, Commissions and Boards as part of the Executive Branch are without power to rule on the constitutional validity of a Statute or Regulation. Travelscape, LLC v. SC Dept. of Revenue, 391 S.C. 69, 705 S.E.2d 28 (2011). As the Supreme Court stated in Ward v. State, 343 S.C. 14, 538 S.E.2d 245 (2000), cited in Travelscape, supra.

"As stated in video gaming, 'if the sole issue posed in a particular case is the constitutionality of a Statute, a Court may decide the case without waiting for an Administrative Ruling . . . requiring a party to raise an issue which cannot be ruled upon by an ALJ makes little sense' and certainly is not effective or appropriate. Here declaratory relief

should not be refused as there is no other effective or appropriate remedy under the circumstances." (Emphasis added).

The constitutionality of a statute is under the jurisdiction of the Circuit Court as a Court of Record under a Declaratory Judgment action; SC Code §15-53-20 and 30.

The Court also ruled in Ward, supra, and Video Gaming Consultants, Inc. v. SC Dept. of Revenue, 342 S.C. 34, 535 S.E.2d 642 (2000) and in Travelscape, LLC, supra, that filing a Declaratory Judgment action is a totally separate cause of action and that it does not relieve a party from seeking the administrative relief available to him and following the administrative procedures in addition to filing the Declaratory Judgment action. This is the exact course of action that has been followed by the Claimant in this matter. Therefore the Claimant would ask this Commission to first note that in the extensive Motion filed and in the extensive references in the Motion to the Declaratory Judgment action that while the Defendants make outlandish, unsupported statements such as it, "strains belief" as to the Claimant filing the request for a Form 15 hearing that in reality much of the Motion is irrelevant and is frivolous in the face of established case law decisions to the contrary of which Defense Counsel should be readily aware.

6. That therefore this Commission is duty bound to follow, apply and determine the issues under the Act and the Claimant must apply for the administrative relief under the provisions of the Act unless and until such time as a decision to the contrary is entered to the contrary by a Court of Record such as the Circuit Court which is the Court of general jurisdiction in the State of South Carolina.

7. That the only other basis set forth for postponement is that the Claimant failed to agree to a deposition (now set) without proper notice at a time when the only matter that was pending before the Commission is the SC Code §42-9-260 hearing to reinstate benefits. The Defendants served the Claimant's Counsel with a Subpoena and Notice of Deposition by letter dated October 11, 2013 with a Certificate of Service, "by depositing a copy of the same in the United States Mail, postage prepaid, addressed to:". That Notice of Deposition and Subpoena served by regular mail was not received by the Claimant until October 16th as is set forth in the Exhibit attached to the Motion for a Continuance. As Defense Counsel agrees, the Rules of the Circuit Court apply to the taking, notice and service of depositions. SCRCF Rule 6(e) provides that where service is by mail, that the party serving the Notice must add five (5) days to the time period for the taking or requiring of the performance of such

act; in this case the taking of the Claimant's deposition. That Rule for an enlargement of time is specifically put in place for exactly the scenario here wherein the deposition was set without the agreement of Counsel for the Claimant the Defendants chose

to give service by mail and must give a period of fifteen (15) days' notice of the setting of the deposition.

8. That additionally as is set forth in the Motion for a Continuance, on the very same day that Claimant's Counsel received notice that the Defendants had chosen a date to set the deposition, which is a date wherein Counsel was at the SC Workers' Compensation Educational Conference, commonly among the workers' compensation community as "Comp Camp", Counsel for the Claimant advised the Defendants' Counsel that he had not received proper notice and that there was nothing pending before the Commission that would entitle the Defendants to a deposition at that point, but advised that he was immediately filing a Form 50 which would give the Defendants a right to take the deposition of the Claimant.

Further and more importantly on that same date, he advised Counsel of Record for the Defendants, Landon L. Hughey, Esquire, that he was immediately filing a Form 50 and that after that was filed, "you will have every right to take Mr. Winfrey's deposition and I will be glad to waive notice and will not

require any notice one I get that filed." The Commission will find that a Form 50 was filed and served on October 21, 2013 and the deposition is set for November 1st, 2013.

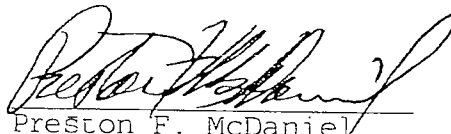
9. That further while not really pertinent to the Motion

for a Continuance, at the time that the deposition notice was served, again there was nothing pending before the Commission except for the Claimant's Form 15 III request for a hearing limited strictly to whether or not benefits were to be reinstated. The Defendants have the affirmative responsibility and burden of proof to prove the grounds in a Form 15 Hearing that allowed them to stop payment of benefits without a hearing. SC Code §42-9-260 provides for a very limited basis upon which the Defendants can stop benefits within the first 150 days without a hearing which at best is an exception to the hearing requirements of §42-17-10. In this case, the alleged basis for stopping benefits without a hearing is that the Defendants conducted a, "good faith investigation" and Commission Reg. 67-504(A) requires in addition to the filing of the Form 15 that the Defendants must with that form have, "documentation attached as to the reason for termination or suspension." Therefore, the Defendants have the affirmative obligation or duty and burden to establish that they have in fact conducted a good faith investigation. They cannot simply say they conducted one before

stopping benefits, they have to prove it. Therefore, the hearing that is set in this matter is for a very limited basis and that is to determine whether or not the Defendants have met their burden of proof under the Statute and whether or not the Claimant is entitled to reinstatement.

WHEREFORE, the Claimant having fully and completely answered the Motion for Continuance and the Motion being based on frivolous grounds and reasons and there being nothing in the Act that allows for the continuance of such a hearing and where the provisions of the Statute are mandatory which the Defendants well know, the Claimant would request that the Commission deny the Motion and consider the imposition of penalties, fines and attorney's fees and costs for having to respond to this frivolous Motion.

Respectfully submitted,


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

Attorney for the Claimant

October 31, 2013

CERTIFICATE OF SERVICE BY MAIL

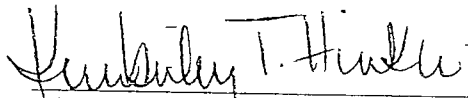
WCC FILE NO. 1306305

I hereby certify that I have on this day served the following in the matter of Clarence B. Winfrey, Jr. v. Archway Service, Inc. with a copy of the REPLY TO MOTION FOR CONTINUANCE AND/OR POSTPONEMENT OF A SCHEDULED HEARING by depositing the same in the United States Mail, with adequate postage thereon, addressed as follows:

Virginia L. Crocker, Judicial Director
SC Workers' Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202

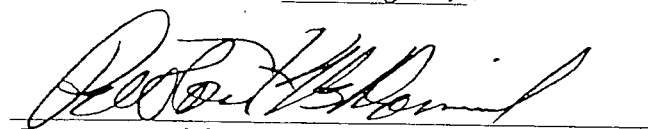
Landon L. Hughey, Esquire
Brett H. Bayne, Esquire
McAngus, Goudelock & Courie
Post Office Box 12519
Capitol Station
Columbia, SC 29211-2519

I also hereby certify that a regular communication by mail exists.



Kimberley T. Hinkle
Paralegal to Preston F. McDaniel

SWORN TO BEFORE ME this
31st day of October, 2013.


Notary Public for South Carolina (L.S.)

My Commission Expires: 10/28/18

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

Proudly representing injured workers
for over 25 years

Preston F. McDaniel
Justin S. Byars
Matthew Robertson
OF COUNSEL
Michael Johnson, P.C.

Telephone (803) 771-7211

Facsimile (803) 252-0709

October 31, 2013

Ms. Virginia L. Crocker
Judicial Director
SC Workers Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202

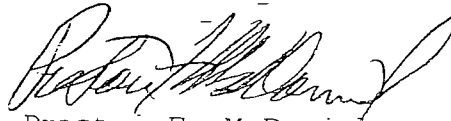
RE: Clarence B. Winfrey v. Archway Service, Inc.
WCC File No. 1306305

Dear Ms. Crocker:

Please find enclosed for filing with the Commission the original and three (3) copies of our REPLY TO MOTION TO COMPEL DEPOSITION OF CLAIMANT AND FOR SANCTIONS, COSTS, FEES, AND/OR ANY OTHER RELIEF DEEMED APPROPRIATE BY THE COMMISSION in the above-referenced matter. I am, by copy of this letter, serving Counsel of Record with a copy of the same.

I hope this is sufficient for filing with the Commission; however, if additional information is needed, please feel free to contact me at your convenience.

Sincerely yours,



Preston F. McDaniel

PFM/kth
Enclosures

cc: Landon L. Hughey, Esquire
Brett H. Bayne, Esquire
Commissioner T. Scott Beck

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
WCC File No. 1306305

CLARENCE B. WINFREY, JR.)
)
Employee-Claimant,)
)
v.)
)
ARCHWAY SERVICE, INC.,)
)
as Employer, and)
)
AMERICAN FIRE AND)
CASUALTY COMPANY,)
)
as Carrier,)
)
Defendants.)
)
_____)

REPLY TO
MOTION TO COMPEL
DEPOSITION OF CLAIMANT AND
FOR SANCTIONS, COSTS, FEES,
AND/OR ANY OTHER RELIEF
DEEMED APPROPRIATE BY THE
COMMISSION

By way of Reply to the Motion filed, the Claimant would respectfully show unto the Commission as follows:

1. That a review of the Exhibits attached to the Motion will establish that the Deposition was set without the agreement or any prior-notice to the Claimant as to the time for which the deposition was to be held.

2. That as set forth in the attachments, the Commission will find that a Notice of Deposition and the Subpoena for the appearance of the Claimant are both dated on October 11, 2013 and it is agreed by all parties that the Notice of Deposition and Subpoena were served by regular mail and there further appears to

be no contest to the fact that that Notice was not received until October 16th. See the exhibits of the letter, Certificate of Service, the Notice of Deposition and Subpoena all of which are dated October 11th and that the Certificate of Service was of service by regular mail.

3. That it is agreed that the Notice of Deposition and Subpoena were filed under the jurisdictional authority of the Commission contained in SC Code §42-3-160 to have depositions taken. The Claimant would assume that there is no disagreement that that Statute requires that a deposition shall be taken under the same Rules and Regulations, (Procedural Jurisdiction) for the,

"taking of like depositions in civil actions at law in the Courts of Common Pleas and the same Rules with respect to the giving of notice to the opposing party, the taking of testimony and transmission and certificate thereof and matters of practice relating thereto shall apply."

The Circuit Court Rules generally provide that once an attorney is of Record that the attorney may be served by regular mail. However, SC Rules of Civil Procedure, Rule 6(e) specifically provides that where service is by regular mail that a period of five (5) days to the required notice period is to be added, thus making a period of fifteen (15) days notice for the taking of a deposition particularly without prior notice or agreement. A very quick review of the documents in this matter will establish that

neither the Claimant's Counsel nor the Claimant were given fifteen (15) days' notice as is required by law.

4. That in addition thereto, that upon receipt of the Notice of Deposition on October 16th, (five (5) days before the deposition set for the 21st), Counsel for the Claimant immediately sent a letter to Counsel of Record Landon L. Hughey, Esquire, notifying him that he would be at Comp. Camp and not be available for the deposition on the date set and that he had not been given the appropriate amount of notice, particularly where the deposition was not set by agreement and therefore there was improper service on the Subpoena. In addition, while noting in the letter the further objection that nothing was currently pending before the Commission that would allow for the deposition, Counsel for the Claimant notified Defense Counsel of Record, Landon L. Hughey, Esquire, that he was in the process of filing a Form 50 and that once that was filed that, "you will have every right to take Mr. Winfrey's deposition and I will be glad to waive notice and will not require any Notice once I get that filed.". The deposition is now set for November 1st, 2013. Claimant's Counsel would ask the Commission to take judicial notice that on October 21st, Mr. Hughey was at the same SC Educational Conference as was Counsel for the Claimant and as an Officer of the Court, Mr. Hughey and Claimant's Counsel discussed

the setting of the deposition of Mr. Winfrey. Claimant's Counsel would also ask this Commission to take judicial notice that the Commissioner before whom this will be heard was at that educational conference and is well aware that both Mr. Hughey, who is the Attorney of Record in the workers' compensation case, and Claimant's Counsel were both present on the 21st at that convention.

5. That subsequent to the receipt of the Notice of Deposition and the letter to Defense Counsel of Record, Landon L. Hughey, Esquire, Counsel would also note to the Commission as attached hereto and incorporated herein by reference that Counsel received another email that Brett H. Bayne, Esquire would be attending the deposition on the 21st and a copy of the email to Mr. Landon L. Hughey, Esquire was then emailed to Mr. Brett H. Bayne, Esquire. A copy of that email is attached hereto and incorporated herein by reference as Exhibit "A".

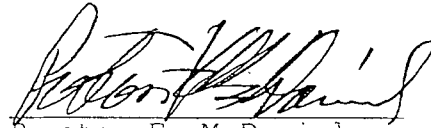
6. That Counsel for the Claimant would note to the Commission that the Motion to Compel is not signed by Landon L. Hughey, Esquire, who is the only Attorney of Record listed at the Commission but is in fact signed and filed by Brett H. Bayne, Esquire. While Mr. Bayne and Mr. Hughey are members of the same firm, Mr. Bayne has never notified this Commission that he is Attorney of Record. That in addition, on the date that the

deposition was set when Mr. Bayne appeared he made the comment to Claimant Counsel's staff, as attached hereto and incorporated herein by reference that they would have been glad to reschedule the deposition if they had only been advised. Said statement is obviously contrary to the action that had been taken by Claimant's Counsel prior to the date that the deposition had been set.

WHEREFORE, having fully responded, Claimant's Counsel would request that the Commission dismiss the Motion to Compel and Claimant's Counsel would ask that the Commission not only not award attorney's fees and costs (query does the Commission have jurisdiction to award), but would in addition award Claimant's Counsel attorney's fees and costs for having to reply to a frivolous Motion. The Defendants did not properly comply with the notice requirements of the Circuit Court Rules and they can submit absolutely no documentation or testimony or evidence that they ever notified Claimant's Counsel that they were setting the deposition without agreement and therefore any costs that were incurred were incurred by them due to their own fault. This deposition could have been conducted on the very Friday after the Defendants scheduled it. As an Officer of the Court, Claimant's Counsel would submit that he would have been glad to have done

that. It is now scheduled by agreement with Mr. Hughey for
November 1st, 2013.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Preston F. McDaniel", written over a horizontal line.

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

Attorney for the Claimant

October 31, 2013

RE: Clarence Winfrey v. Archway Services (Claim No.: 22209963)

From: Kimberley T. Hinkle (kcmcdlaw@hotmail.com)
Sent: Fri 10/18/13 10:21 AM
To: Joy Mingie (joy.mingie@mgclaw.com)
1 attachment
SCAN15042_000.pdf (40.8 KB)

Please see the letter from Preston to Rocky dated October 16, 2013. Preston and Mr. Winfrey will not be attending the deposition. I have attached another copy of said letter for your convenience. Thank you, Kim

Kimberley T. Hinkle, Paralegal

McDaniel Law Firm

1315 Elmwood Avenue

Columbia, South Carolina 29201

Tel: 803.771.7211

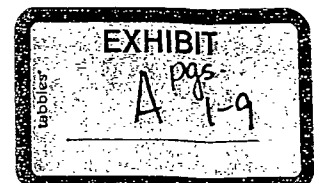
Fax: 803.252.0709



Please consider the environment before printing

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> From: joy.mingie@mgclaw.com
> To: kcmcdlaw@hotmail.com
> CC: scheduling.columbia@mgclaw.com
> Subject: Clarence Winfrey v. Archway Services (Claim No.: 22209963)
> Date: Fri, 18 Oct 2013 12:35:39 +0000
>



>
> Hi Kim,
>
> This is to confirm Clarence Winfrey's deposition on Monday, October 21 beginning at 10am.
>
> Please let me know if you have any questions.
>
> Thanks!
>
> Joy
> Scheduling Assistant
>
> <http://mm1.lettermark.net/mgclaw/card/VLZF_6.map>
> [Joy Mingie Scheduling Assistant 803-227-2297 joy.mingie@mgclaw.com]
>
>

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for over 25 years

Preston F. McDaniel
Justin S. Byars
Matthew Robertson
OF COUNSEL
Michael Johnson, P.C.

Telephone (803) 771-7211

Facsimile (803) 252-0709

October 16, 2013

VIA EMAIL: rhughey@mgclaw.com
Landon L. Hughey, Esquire
McAngus Goudelock & Courie, LLC
Post Office Box 12519
Columbia, South Carolina 29211

RE: CLARENCE B. WINFREY, JR. v. ARCHWAY SERVICE, INC.
WCC File No. 1306305

Dear Rocky:

In reference to the Subpoena that we received today by mail October 16, 2013. Obviously we did not receive the 15 day required notice and therefore you do not have proper service and so we will not be attending the Deposition on the 21st.

Second, it is my opinion that the only thing that is pending before the Commission is our request for reinstatement of benefits based on whether or not your clients can establish that they conducted a good faith investigation prior to stopping benefits.

However, because I want to make sure that nothing stupid happens at that Hearing especially considering everything we have given you, I am going to go ahead and file a Form 50 and after I file that you will have every right to take Mr. Winfrey's Deposition and I will be glad to waive notice and will not require any notice once I get that filed. I am going to try to get that out of here by tomorrow but if not it will be filed as soon as I get back from Comp Camp.

Attached is a statement we just received from Mr. Winfrey's doctor.

If you have any questions give me a call..

Sincerely yours,



Preston F. McDaniel

PFM/rmt



October 4, 2013

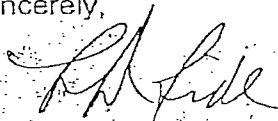
Preston F. McDaniel
McDaniel Law Firm
1315 Elmwood Ave.
Columbia S. C. 29201

Dear Mr. McDaniel:

Re: CLARENCE WINFREY (08/19/1962)

Mr. Winfrey had a severe myocardial infarction after electrocution in the workplace in May. He required emergency surgery. He has severe congestive heart failure and requires continuous treatment. Lack of continuous medical therapy would likely be fatal for him. Without insurance, he cannot afford essential medication.

Sincerely,

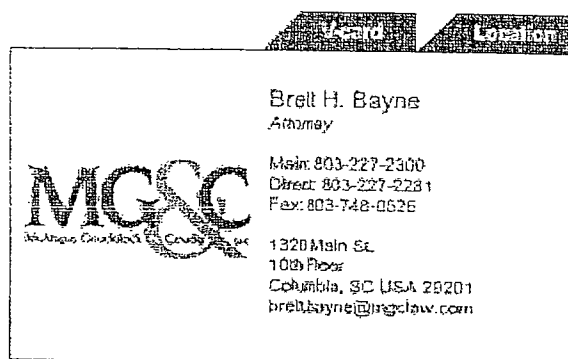


Lanneau D. Lide, M. D.

Kim Hinkle

From: Brett Bayne <brett.bayne@mgclaw.com>
Sent: Friday, October 18, 2013 4:09 PM
To: 'Kim Hinkle'; Joy Mingie
Cc: Rocky Hughey
Subject: RE: Clarence Winfrey v. Archway Services (Claim No.: 22209963)

As we have scheduled a court reporter and properly noticed the deposition, I plan to be there and put our position on the record related to Mr. McDaniel's and Mr. Winfrey's refusal to appear for lack of 15 days notice.



Please consider the environment
before printing this email.

From: Kim Hinkle [mailto:kim@pfmcdlaw.com]
Sent: Friday, October 18, 2013 4:08 PM
To: Joy Mingie
Cc: Brett Bayne; Rocky Hughey
Subject: RE: Clarence Winfrey v. Archway Services (Claim No.: 22209963)

Again, per Mr. McDaniel's to Mr. Hughey, he and Mr. Winfrey will not be attending the deposition. (Mr. McDaniel is attending Comp Camp in Myrtle Beach, SC and therefore will not be in Columbia).

From: Joy Mingie [mailto:joy.mingie@mgclaw.com]
Sent: Friday, October 18, 2013 11:43 AM
To: Kim Hinkle (kim@pfmcdlaw.com) (kim@pfmcdlaw.com)
Cc: Scheduling Columbia; Brett Bayne; Rocky Hughey; Stephanie Kluszczynski
Subject: RE: Clarence Winfrey v. Archway Services (Claim No.: 22209963)

This is to confirm Attorney Brett Bayne will be present at your office, Monday Oct 21 at 10am, to conduct Mr. Winfrey's deposition pursuant to the subpoena.

Please direct future concerns related to this deposition to Brett Bayne as I have copied him on this email.

Thanks!

Joy E. Mingie
Scheduling Assistant



*Please consider the environment
before printing this email.*

From: Kimberley T. Hinkle [<mailto:kcmcdlaw@hotmail.com>]
Sent: Friday, October 18, 2013 10:21 AM
To: Joy Mingie
Subject: RE: Clarence Winfrey v. Archway Services (Claim No.: 22209963)
Importance: High

Please see the letter from Preston to Rocky dated October 16, 2013. Preston and Mr. Winfrey will not be attending the deposition. I have attached another copy of said letter for your convenience. Thank you, Kim

Kimberley T. Hinkle, Paralegal
McDaniel Law Firm
1315 Elmwood Avenue
Columbia, South Carolina 29201
Tel: 803.771.7211
Fax: 803.252.0709



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> From: joy.mingie@mgclaw.com
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> Hi Kim,
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> Thanks!
>
> Joy
> Scheduling Assistant
>
> <http://mm1.lettermark.net/mgclaw/card/VLZF_6.map>
> [Joy Mingie Scheduling Assistant 803-227-2297 joy.mingie@mgclaw.com]
>
>

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Preston F. McDaniel
Justin S. Byars
Matthew Robertson
OF COUNSEL:
Michael Johnson, P.C.

Telephone (803) 771-7211

Facsimile (803) 252-0709

October 24, 2013

VIA EMAIL ONLY: brett.bayne@mgclaw.com
Brett H. Bayne, Esquire
McAngus Goudelock & Courie, LLC
Post Office Box 12519
Columbia, South Carolina 29211

RE: Clarence B. Winfrey, Jr. v. Archway Service, Inc.
WCC File No. 1306305

Dear Brett:

While at Comp Camp, Rocky and I talked briefly, and we talked about getting the deposition of Mr. Winfrey set up and getting the claim back on line. When I got back to the office, Kim told me that when you came over that you were saying that if you had known that I was at Comp Camp we could have reset the deposition. That comment made me a little confused because I had sent an email to Rocky and then when we got notice that you were going to go ahead and come over (even after my email to Rocky) to handle the deposition, I sent that email to you letting you know that I was going to be at Comp Camp, that I was filing a Form 50 for a Hearing and that as soon as I did that I would get together with Rocky and we would get the deposition set. I say all of that because I was confused as to why you were coming over and that comment makes me believe that you probably did not, for some reason, get those emails.

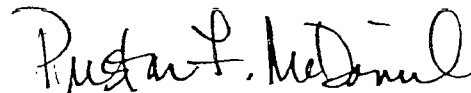
In any event I am going to send a copy of this to Rocky as I am not sure who is handling the comp side of this claim. I will be glad to work with you or Rocky in getting the deposition set now. I also need to know if you are going to withdraw the Motions so I know whether or not I need to respond to those.

Also, for your information I just assumed you did a lot of Circuit Court work and in reference to the taking of depositions as SC Code §42-3-160 applies and under that section the same provisions apply for giving notice under the Circuit Court Rules in a deposition in a worker's compensation case. As I know you are aware, when you give notice of the scheduling of a

Brett H. Bayne, Esquire
October 24, 2013
Page 2

deposition in addition to the Subpoena, SCRCP Rule 6(e) provides that when you are giving that notice to an opposing party by regular mail you add five (5) days to the ten (10) day notice requirement. That is what I was referring to and I am sorry if I did not make that clear in the email. I think that is probably a moot point at this point, but however, let me know how we are going to proceed and again by copy of this email I am notifying Rocky so that somebody can let me know who is going to be handling this on the worker's compensation side. I assume that you will be handling the Circuit Court matter and I will address everything in response to those filings to you in that regard.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Preston F. McDaniel". The signature is fluid and cursive, with the first name "Preston" and last name "McDaniel" clearly distinguishable.

Preston F. McDaniel

PFM/rmt/kth

cc: Landon L. Hughey, Esquire (via email only)

CERTIFICATE OF SERVICE BY MAIL

WCC FILE NO. 1306305

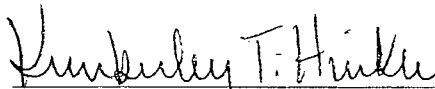
I hereby certify that I have on this day served the following in the matter of Clarence B. Winfrey, Jr. v. Archway Service, Inc. with a copy of the REPLY TO MOTION TO COMPEL DEPOSITION OF CLAIMANT AND FOR SANCTIONS, COSTS, FEES, AND/OR ANY OTHER RELIEF DEEMED APPROPRIATE BY THE COMMISSION by depositing the same in the United States Mail, with adequate postage thereon, addressed as follows:

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Landon L. Hughey, Esquire
Brett H. Bayne, Esquire
McAngus, Goudelock & Courie
Post Office Box 12519
Capitol Station
Columbia, SC 29211-2519

I also hereby certify that a regular communication by

~~mail exists.~~



Kimberley T. Hinkle
Paralegal to Preston F. McDaniel

SWORN TO BEFORE ME this
31st day of October, 2013.



(L.S.)

Notary Public for South Carolina

My Commission Expires: 10/28/18



ATTORNEYS AT LAW

Reply To
LONDON HUGHEY
Direct Dial: (803) 227-2261
rhughey@mgclaw.com
COLUMBIA

November 4, 2013

VIA HAND DELIVERY

Commissioner T. Scott Beck
S. C. WORKERS' COMPENSATION COMMISSION
1333 Main Street, Suite 500
Columbia, South Carolina 29201

RE: Clarence Winfrey v. Archway Services and American Fire & Casualty Insurance
Company c/o Liberty Mutual Insurance
Date of Accident: May 22, 2013
WCC File No.: 1306305
Our File No.: 2095.13137
Claim No.: 22209963

Dear Commissioner Beck:

Please find enclosed our Pre-Hearing Brief and Notice of Witnesses and Written Medical Reports for filing in the above captioned matter.

By copy of this letter to Preston F. McDaniel, Esquire, Claimant's attorney, we are notifying him of these submissions and serving copies of the same upon him by mail.

Very truly yours,

Landon Hughey

LLH/sso

Enclosures

cc: Preston F. McDaniel, Esquire, The McDaniel Law Firm
Susan Kizer, Archway Services Inc (via email)
Terri Hughes, Liberty Mutual Insurance (via email)

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 1306305

CLARENCE WINFREY,	}	
	}	
Employee,	}	
	}	
Claimant,	}	
	}	
vs.	}	
	}	
ARCHWAY SERVICES INC,	}	
	}	
Employer,	}	
	}	
AND	}	
	}	
AMERICAN FIRE & CASUALTY	}	
INSURANCE COMPANY C/O LIBERTY	}	
MUTUAL INSURANCE,	}	
	}	
Carrier,	}	
	}	
Defendants.	}	

CERTIFICATE
OF
SERVICE

The undersigned certifies that she is an employee at MCANGUS GOUDELOCK & COURIE, and that she has served, on the date set forth below, a copy of the document described below, in the above entitled action to the following persons, pursuant to Section 15-9-930 and Section 15-9-940 of the Code of Laws of South Carolina, 1976, by depositing a copy of same in the United States Mail, postage prepaid, addressed to:

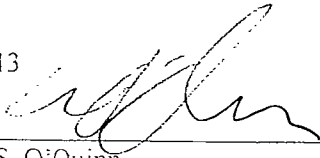
TO: Preston F. McDaniel, Esquire
The McDaniel Law Firm
1315 Elmwood Avenue
Columbia, South Carolina 29201

VIA HAND DELIVERY

S. C. WORKERS' COMPENSATION COMMISSION
1333 Main Street, Suite 500
Columbia, South Carolina 29201

DOCUMENT: Pre-Hearing Brief and Notice of Witnesses and Written Medical Reports

DATE OF MAILING: November 4, 2013


Sharon S. O'Quinn
Secretary to Landon Hughey



PRE-HEARING BRIEF
WCC File No: 1306305

Claimant's Name: Clarence Winfrey SSN: _____
Address: _____
Home Phone: _____ Work Phone: _____
Preparer's Name: Landon Hughey

Employer's Name: Archway Services Inc
Address: 2316 Kings Road Ext.
Shelby, North Carolina 28152
Carrier: American Fire & Casualty Insurance Company c/o
Liberty Mutual Insurance
Preparer's Phone #: (803) 227-2261

A claim for workers' compensation benefits is made based on the following grounds:

☒ Injury ☐ Illness ☐ Repetitive Trauma

1. Comp. Rate: \$442.40 2. AWW: \$ 663.57 Date of Injury: 05/22/13
3. Type of injury and body part(s): Claimant alleges injury to his neck, left shoulder and heart. Defendants have denied this ~~is~~ failing to meet the standards for being a compensable claim.
4. Facts in controversy: Defendants have denied this claim pursuant to S. C. Code §42-9-260. The issue for this Hearing is whether or not Claimant can meet his burden of proving a compensable claim pursuant to the Act.
5. Legal issues involved: Section 42-9-10, Section 42-9-20, Section 42-9-30, Section 42-9-260.
6. Unusual aspects: Claimant has filed a companion case in the South Carolina Circuit Court. In that case, Claimant has ~~and~~ a bad faith denial of benefits and asked for a declaratory judgment finding §42-9-260 unconstitutional. Through the Circuit Court Claimant initially sought and received a temporary restraining order preventing Defendants from denying the claim and ordering that Defendants should pay all back benefits and medical benefits. Defendants moved to quash the Order and were successful. Judge ~~learned~~ an Order revoking the temporary restraining order and keeping the declaratory judgment action in place. To that end, the ~~Circuit~~ Court still retains jurisdiction over the declaratory judgment action and the question raised by Claimant as to whether S. C. Code §42-9-260 is unconstitutional. Defendants have filed a Motion to Postpone this Hearing on the basis that Claimant is alleging that ~~the state~~ they are requesting a Hearing under is unconstitutional. Defendants' position is that Claimant cannot assert §42-9-260 as unconstitutional in the Circuit Court and at the same time demand its protections before the South Carolina Workers' Compensation Commission. Because the South Carolina Circuit Court is a court of superior jurisdiction to the South Carolina Workers' Compensation Commission, the Workers' Compensation Commission should postpone or delay the Hearing until the South Carolina Circuit Court has had an opportunity to have a Hearing and rule on the merits of Claimant's declaratory judgment action. If the Circuit Court were to rule 42-9-260 unconstitutional, the entire issue before the Commission would be moot and no hearing could be had. Further, a finding that 42-9-260 is unconstitutional would mean that Defendants were left with no guidance on how to pay, stop pay, and/or suspend or terminate benefits ~~on this claim~~. It should be noted that Defendants are not the cause of the necessary delay. Rather, the reason for the delay is Claimant's own decision to file a declaratory judgment action in the South Carolina Circuit Court. Because the need for delay is Claimant's ~~decision~~ to file in the Circuit Court, Claimant cannot be prejudiced by a delay in the underlying Commission proceedings while the Circuit Court resolves the constitutionality issue that is germane to this claim. Conversely, Defendants would be unfairly prejudiced by having ~~to add~~ both the constitutionality of 42-9-260 in the Circuit Court while conducting a hearing before the Commission that could be ~~adversely~~ affected by any decision of the Circuit Court. Therefore it is in the interest of judicial economy and fairness to Defendants that the Commission postpones this Hearing until the Circuit Court can rule on Claimant's declaratory judgment action.

In addition, Defendants have outstanding Motions before the South Carolina Workers' Compensation Commission. These motions include a Motion to Quash the deposition of the adjuster, a Motion to Compel the deposition of Claimant and for the costs and fees associated with Claimant's refusal to appear at the deposition because Defendants did not give the 15-day notice as required by ~~state~~ as well as the aforementioned Motion to Postpone the Hearing. Claimant has recently filed replies to each of these and they will be addressed in separate filings as needed. However, related to the 15-day notice requirement in the Motion to Compel Claimant's ~~deposition~~, Claimant relies on Rule 6(e) as providing an additional five (5) days for notice of a deposition. This is not the case. Adams v. ~~Winchouse~~ (an unpublished opinion at 2009-UP-401) and Riverwoods LLC v. County of Charleston (349 S.C. 378, cited to in Adams as a ~~statutory~~ construction) very clearly state that Rule 6(e) does not apply in Workers' Compensation cases. Therefore, a ten (10) ~~day~~ notice was properly given and Claimant adamantly refused to attend because he did not get fifteen (15) days notice (see Exhibit 4. ~~Previously~~ we did not receive the 15 day required notice and therefore you do not have proper service and so we will not be attending the Deposition on the 21st).

This claim surrounds an alleged shock suffered by Claimant that Claimant alleges then resulted in a VSD to his heart. Defendants dispute that the shock either caused the myocardial infarction or that the shock caused the VSD.

7. Witnesses (designate if expert):* Designated Employer representative.
8. Exhibits: Statement of Bobby Ruppe dated 09/23/13; Emails between Bobby Ruppe and Clarence Winfrey dated 05/27/13; Drivers Daily Logs dated 05/22/13-05/23/13; Letter from Preston McDaniel to Defense Counsel dated 10/16/13; Motion to Quash the Deposition of the Adjuster dated 09/27/13; Motion to Compel and for Costs, P. 211, 10/21/13; Motion for Continuance dated 10/21/13; Summons and Complaint filed by Preston McDaniel dated 09/27/13; Temporary Restraining Order dated 10/01/13.

9. Medical evidence (indicate report pursuant to R.67-612; deposition or appearance):

Doctors Care, record dated 05/28/13, consisting of 1 page; South Carolina Heart Center, records dated 05/28/13, consisting of 3 pages; Jeffrey Allen Travis, M.D., records dated 05/28/13, consisting of 3 pages. Defendants reserve the right to amend this Pre-Hearing Brief with additional medical evidence if it becomes available prior to the Hearing.

10. Name, address, and specialty, if any, of the treating physician: Jeffrey A. Travis, M.D., Lexington Cardiovascular Surgery; Lanneau D. Lide, M.D.

11. Impairment rating(s); body part(s); physician and date of opinion: No impairment ratings have been given at this point.

12. I am amending my Form 50/51 in the following manner: None.

☐ **Mediation**

- ☐ a. Mediation is requested to be ordered pursuant to Reg. 67-1801 B.
☐ b. Mediation is required pursuant to Reg. 67-1802.
☐ c. Mediation is requested by consent of the Parties pursuant to Reg. 67-4803.
☐ d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.

Questions regarding mediation may be submitted to mediation@wcc.sc.gov.

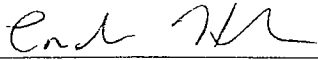
I verify the contents of this form are accurate and true to the best of my knowledge.

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to Preston F. McDaniel, Esquire, The McDaniel Law Firm

1315 Elmwood Avenue

address Columbia, South Carolina 29201 on the 4th day of November 20 13.

by ☒ first class postage ☐ certified mail ☐ personal service.

Signature: 

Email: rhughey@mgclaw.com

Date of Hearing: November 13, 2013

Time needed for hearing: 1 hour

Questions about the use of this form should be directed to the Jurisdictional Commissioner. Refer to Regulations 67-204 through 67-211, 67-211, and Regulations 67-601 through 67-615; as well as Reg. 67-1801. File this form and proof of service on the opposing party according to R.67-611 and R.67-212. Do not send medical reports. *Commissioners reserve the right to admit expert witnesses at hearings.

WCC FORM # 53

Revised 7/13

58

PRE-HEARING BRIEF

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 1306305

CLARENCE WINFREY,

Employee,

Claimant,

vs.

ARCHWAY SERVICES INC,

Employer,

AND

AMERICAN FIRE & CASUALTY
INSURANCE COMPANY C/O LIBERTY
MUTUAL INSURANCE,

Carrier,

Defendants.

NOTICE OF WITNESSES AND
WRITTEN MEDICAL REPORTS
TO BE INTRODUCED AS
DIRECT EVIDENCE ON BEHALF
OF DEFENDANT

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION AND PRESTON
F. MCDANIEL, ESQUIRE, ESQUIRE:

YOU ARE NOTIFIED that the Defendants, pursuant to the provisions of the South
Carolina Workers' Compensation Act and Section 1-23-330 of the South Carolina Code of Laws
(Cum. Supp. 1988) submit the following medical records and other documents as evidence:

APA#	DOCTOR	PRACTICE	DATES	PAGE #
1.		Doctors Care	05/28/13	1
2.		South Carolina Heart-Center	05/28/13	2-4
3.	Jeffrey A. Travis, M.D.	Lexington Cardiovascular Surgery	05/28/13	5-7
Ex. 1	Statement of Bobby Ruppe		09/23/13	8
Ex. 2	Emails Between Bobby Ruppe and Clarence Winfrey		05/27/13	9
Ex. 3	Drivers Daily Log		05/22/13 – 05/23/13	10-11
Ex. 4	Letter from Preston McDaniel to Defense Counsel		10/16/13	12

Ex. 5	Motion to Quash the Deposition of the Adjuster	09/27/13	13-21
Ex. 6	Motion to Compel Deposition and For Costs	10/21/13	22-24
Ex. 7	Motion for Continuance	10/21/13	25-30
Ex. 8	Summons and Complaint Filed by Preston McDaniel	09/27/13	31-48
Ex. 9	Temporary Restraining Order	10/01/13	49-51

YOU ARE FURTHER NOTIFIED that you have the right to cross-examine or otherwise oppose this evidence and, should you desire to exercise this right, you are to promptly schedule the deposition of any provider whose records are submitted, for the purposes of cross-examination, or otherwise promptly submit opposing medical records into evidence.

YOU ARE FURTHER NOTIFIED that these records, or photocopies of the same, will be provided to the South Carolina Workers' Compensation Commission for insertion in their file and for consideration as evidence on behalf of the Defendants.

YOU ARE FURTHER NOTIFIED that the following witnesses may be called on behalf of the Defendants: Designated Employer representative.



LANDON HUGHEY
MCANGUS GOUDELOCK & COURIE, L.L.C.
Post Office Box 12519, Capitol Station
Meridian, 1320 Main Street, 10th Floor
Columbia, South Carolina 29211-2519
(803) 779-2300
Attorneys for the Employer/Carrier

Columbia, South Carolina
November 4, 2013

(F) 603-234-8122 Claim # 22209963
BAD COPY 10-10

FROM ROOM TIME
ACCOUNT NUMBER DATE TIME CHECKOUT TIME
662502 05/28/13 09:25 am DC SEVEN-DAYS, 10:25
NAME & ADDRESS: WINFREY, CLARENCE
DOB: (50 years) GENDER: M
INSURANCE BALANCE \$0.00
ACCOUNT BALANCE \$0.00
CURRENT CHARGES \$0.00
AMOUNT PAID \$0.00
NEW BALANCE \$0.00
INSURED: WINFREY, CLARENCE RELATION: SELF
INS: WKK
REASON: NECK PAIN (shocked by 480 v with jerked neck)
NICKNAME: (down to shoulder) COPY: SP
514313

Personal Hx Family Hx Social Hx
M DM Alcohol +
TN HTN Tobacco +
Allergies: NKDA
Medications: Tylenol / Ibuprofen
Metric
Meds/Allergies Reviewed
ROS (/ or O): Fatigue, Dizzy, Weak, Wt. Loss, Fever, Chills, Nasal Congestion, Sinus Pain, Ear Pain, Sore Throat, SOB, CP, Cough, Sputum, Wheeze, ABD Pain, N, V, D, Constip., Dysuria, Freq., Urgency, Back Pain, Pelvic Pain, Vag. D/C, Headache, Syncope, Rash
All others negative
HT 39.4 BMI 13.4 PULSE 128 RESP 20 TEMP 97.5
LMP
Tetanus
HYSICAL: (see reverse) Omit I/NA
if nml, O if abnml. & give details
Chief Complaint: 480 V
General HEENT WDOWN WIM W NPS HPI
Neck appears SOB but clear
Nodes entry wound
Lungs doxycycline 3rd
CV fever
Abd tenderness @
Back trachydis
Ext trapneus
GU cor - 6/11/11 SEM
Neuro tachycardic
Skin/Breasts
Chaperone
I.V.
Injection
Nebulizer
Procedure
Pulse Ox

AGNOSIS:

Tachycardia / electrical shock / muscle shock

Patient Care Instructions Discussed
Lifestyle Modification
Preventative Recommendation(s)
Prescriptions / OTC Meds
Side Effects Discussed
Follow-Up:
turn:
Worsening symptoms:
If not better:
-to ER if:
Off Work / School
PSR Notes: NEW
Dr Dasgupta
SC Heart
LEX
FLEXEN 10 TTD
#30
Hydrocodone APAP 5/500
Date: 7-2-2013

I voluntarily consent to any and all health care treatment and diagnostic procedures provided by Doctors Care and its associated physicians, clinicians and other personnel. I am aware that the practice of medicine is not an exact science and I further state that I understand that no guarantee has been or can be made as to the results of the treatments or examinations at Doctors Care.
I consent to the use and disclosure of my/our patient's protected health information for purposes of obtaining payment for services rendered to me/the patient, treatment and health care operations consistent with Doctors Care Notice of Privacy Practices.
I authorize payment of medical benefits to Doctors Care physicians or their designee for services rendered.

Signature of Authorized Person's Signature: Date: 7-2-2013

Workers Compensation patients: I hereby authorize Doctors Care to speak to a rehabilitation specialist, my employer, my insurance carrier or other professionals involved in my care or rehabilitation regarding my medical records and the treatment I have received or will receive.

Signature of Authorized Person's Signature: Date:



OFFICE CONSULT
May 28, 2013

CLARENCE WINFREY 50 year old M (08/19/62) Account #: 000009112

Requesting the consult: PCP No

Consultation is requested for

Primary care physician: PCP No

Cardiologist: Himadri Dasgupta M.D.

Chief complaint: New Pt Exam, Palpitations / Arrhythmias, Dyspnea

History of present illness:

Mr. Clarence Winfrey is a 50-year-old male is being seen in consultation at the request of Dr. Greenfield at doctor's care for further workup of an abnormal EKG and new onset heart murmur. A review of his records today shows that he received an electric shock in 5 days ago and since then has complained of a pain in his left shoulder radiating to the left scapular region, the left side of his neck, left infraclavicular region and left arm. He has also been having excessive diaphoresis and has dyspnea with exertion. The patient states that none of his symptoms have really progress. His pain appears to have been responding to Tylenol and Motrin but comes back when the effect wears off. The patient denies any palpitation, syncope or presyncope. He denies any orthopnea or dependent edema. At the time of this interview the patient denied any chest pain but had minimal left shoulder pain.

The patient denied any prior cardiac history and stated that many years ago he had a normal cardiac catheterization. On auscultation today he was found to have a grade 4/6 early and mid systolic murmur in the left parasternal region. A stat echocardiogram cyst and a tiny cyst with possible expansion of the distal and apical inferior and inferoseptal segments with a possible VSD with left to right shunting.

His EKG was reviewed and showed significant ST elevation in leads L2 and L3 with ST depression in V1 through V3 and a right bundle branch block. A repeat EKG in our office was the same as that from doctor's care.

On arrival the patient was found to be tachycardic with a heart rate of around 120 beats per minute. On arrival discussed with the pressure was about 100 but at the time of this interview his blood pressure was 128/88.

Mr. WINFREY has not had palpitations, syncope or near syncope. He denies claudication. There is no discoloration or ulceration of the lower extremities. He has had no TIA or stroke-like symptoms.

CARDIAC HISTORY

Risk Factors:

- 1 Tobacco Abuse: cigarettes [Tobacco per day: 0.50]

CARDIOVASCULAR PROCEDURES

Past medical history: ABN EKG, Gout, Hypertension

SOCIAL HISTORY

Family: Unknown

Diet: Regular

Tobacco Cessation: The patient was counseled on tobacco cessation.

Alcohol: Yes Occasional

Caffeine: Coffee

SEE ATTACHED

Family history: There is a family history of premature coronary artery disease. Father Hypertension, CVA, Myocardial Infarction at 54 (cause of death)

Review of symptoms:

RESP - Negative for snoring, hemoptysis. Positive for dyspnea. CONST - Negative for weight gain, weight loss, fever. EYES - Negative for visual changes. ENT - Negative for hearing loss. CARD - Negative for chest pain, diaphoresis, orthopnea, syncope, pnd. Positive for palpitation. VASC - Negative for claudication, edema. GI - Negative for nausea, reflux, bleeding. GU - Negative for hematuria, nocturia. NEURO - Negative for dizziness, memory loss, seizures. PSYCH - Negative for depression, hallucinations. HEMAT - Negative for acute anemia, thrombocytopenia.

Physical exam: CONST - The patient is 5ft 11in tall, and weighs 240.8lbs. The BMI is 33.7 kg/m2. Blood pressure in the left arm is 138/104 mmHg in the sitting position. The pulse is 122/min. The respirations are 22/min. Nourishment - Obese. Appearance - Well Developed. EYES - Lids/External - Bilateral Normal. Conjunctiva - Bilateral Normal. NMT - Oral Mucosa - Moist, No Cyanosis, No Pallor. NECK - JVP - Less Than 8. RESP - Respirations - Nonlabored. Breath Sounds - Clear Throughout. Rales - Absent. Rhonchi - Absent. Wheezes - Absent. CARDIAC - Rhythm - Regular. Palpation - PMI Normal. Heart Sounds - S1 Normal, S2 Normal, No S3, No S4. Murmurs - IV/VI systolic ejection murmur heard at the left sternal border. VASC - Carotid - Bilateral Normal. Aorta - Normal Size. Femoral - Bilateral Normal Pulse. Post Tibial - Bilateral Normal. ABD - Tenderness - None. Hepatomegaly - Absent. Splenomegaly - Absent. M/S - Gait - Normal. Able to Exercise - Yes. EXT - Clubbing - Absent. Lower Extremity Edema - Absent. SKIN - Venous Stasis Ulcers - Absent. PSYCH - Orientation - Oriented to Time, Person and Place. Mood - Appropriate.

IMPRESSION AND PLAN

01. Acute MI, Inferior
02. Shortness of Breath
03. Chest Pain, Unspecified
04. Limb Pain, Arm
05. Obesity
06. Tobacco Abuse
07. Ventricular Septal Defect

It appears that the patient has had a myocardial infarction in the last few days but has persistent estimation and some symptoms. It is also possible that he has had a VSD is a completion of this MI. I have informed him of our findings, the current diagnosis and his prognosis and a plan of action. STEMI protocol was activated at Lexington Medical Center. The patient is being transferred by ambulance to the cardiac catheterization laboratory. I have discussed with our interventionalists Dr. Lide who do emergent cardiac catheterization and decide further management. A CVTS consultation will be obtained if the VSD is confirmed. The patient will be given beta blockers and aspirin.

Orders:

- | | |
|---|---|
| 1 | Patient counseled on tobacco cessation. |
|---|---|

FINAL MEDICATION LIST

ibuprofen 200 mg tablet	take 2 tablet by ORAL route every 6 hours as needed with food
Tylenol Extra Strength 500 mg tablet	take 2 tablet by ORAL route every day as needed

SEE ATTACHED

Electronically signed by: Himadri Dasgupta M.D. 05/28/2013 @ 1:18 PM

D: T:05/28/2013
2411 he suddenly

05/28/2013

05/28/2013

SEE ATTACHED

4

Winfrey, Clarence B #M002010261
Admission Info: Inpatient (Adm: 05/28/13)
Hospital Account: 200044872

Description: 50 y.o. M
Primary Service: Med/Surg
Unit Info: Surg 4thNT

Consult Notes

Consults signed by Jeffrey Allen Travis, MD at 05/29/13 0629

Author:	Jeffrey Allen Travis, MD	Service:	(none)	Author	Physician
Filed:	05/29/13 0629	Note Time:	05/28/13 1553	Type:	Trans ID: 3M926468
Trans Status:	Available				
Dictation Time:	05/28/13 1553	Trans Time:	05/28/13 1612	Trans Doc Type:	Consult Note

REQUESTING PHYSICIAN: Dr. Lide

REASON FOR CONSULTATION: Consideration for CABG and repair of VSD.

HISTORY OF PRESENT ILLNESS: The patient is a 50-year-old white male who states on Wednesday he was working on some electrical equipment and got a shock. He went home from work and experienced significant chest pain as well as back and shoulder pain. This persisted through the weekend and he really did not do much over the weekend other than sit around and watch TV and experienced pain. Due to the persistence of the pain he presented to an Urgent Care Center today where his EKG was abnormal and he was sent to the hospital. He was taken to the Cath Lab emergently where he was found to have occlusion of his posterior descending coronary artery, severe 3-vessel coronary disease, and a VSD. I have been asked to see him for evaluation and management.

PAST MEDICAL HISTORY: None.

PAST SURGICAL HISTORY: None.

HOME MEDICATIONS: None.

ALLERGIES: No known drug allergies.

SOCIAL HISTORY: The patient is a pack per day smoker for the last 35 years. The patient drinks about a 12-pack per week but does not drink beer on a daily basis. Denies any illicit drug use. He does maintenance type work for grocery stores like Publix.

REVIEW OF SYSTEMS: A 10-point review of systems otherwise negative other than listed in the HPI.

PHYSICAL EXAMINATION

GENERAL: The patient is a well-developed white male in no apparent distress.

HEENT: Atraumatic, normocephalic. Extraocular movements intact. Pupils equal, round and react to light. Oropharynx is clear. Sclerae nonicteric.

NECK: No JVD. No carotid bruits.

CARDIOVASCULAR: Regular S1, S2. He is very tachycardic. There is a 3/6 systolic murmur heard throughout the precordium.

LUNGS: Clear to auscultation bilaterally. Good chest expansion bilaterally.

ABDOMEN: Soft, nontender, nondistended. No hernias or masses.

MUSCULOSKELETAL: Full range of motion. There is no clubbing, cyanosis, or edema. He has 2+ pulses throughout his vascular exam.

NEUROLOGIC: Intact. Moves all 4 extremities, 5/5 strength. Sensation is intact.

DIAGNOSTIC STUDIES: I reviewed his cardiac catheterization. He has very severe diffuse 3-vessel disease. On the left side his LAD is diseased but most of this is distally. There is no proximal

obstructive disease. He has a ramus with about an 80-90% proximal lesion. It is graftable. His circumflex vessels again are thready as they get to the distal portions but I do not see a graftable vessel. His right coronary artery is free of proximal disease. His PDA is occluded and has TIMI-2 flow. This is obviously the infarct artery. His ejection fraction looks mildly reduced. It is a little bit difficult to fully ascertain given the tachycardia. He has an obvious VSD with quick filling of the right ventricle and pulmonary artery on ventriculogram.

His laboratory values show his BUN to be 20, creatinine 1. White count is elevated slightly at 17, hemoglobin 15, hematocrit 48. Chest x-ray is pending.

IMPRESSION: Severe 3-vessel coronary disease with acute post-infarct ventral septal defect (VSD).

RECOMMENDATIONS: I think the patient needs to be considered for coronary artery bypass grafting surgery. Right now, he is hemodynamically stable with no evidence of end-organ perfusion difficulties. We will obtain a chest x-ray. Although he has good room air SATs, it does not appear he is in overt failure. We will also get an echo. Certainly if he develops hemodynamic compromise, we will place a balloon pump and speed up the timing of surgery. Right now, I think we have a few moments to better evaluate him and consider him for reparative surgery. Discussed all this with the patient who has no family members at the time to convene with per his report.

T: 05/28/2013 04:12 P/bds

Signed by Jeffrey Allen Travis, MD on 05/29/13-0629

Consult Orders

Consult to Social Work - Equipment (DME) [17195308]		Discontinued	
Ordering user:	Victor A. Gomez, PA-C 06/05/13 0720	Ordering provider:	Victor A. Gomez, PA-C
Authorized by:	Steven W. Marra	Frequency:	Once 06/05/13 1052 - 1 Occurrences
Electronically signed by:	Victor A. Gomez, PA-C 06/05/13 0720		
Electronically cosigned by:	Steven W. Marra 06/05/13 1134 for Ordering		
Released by:	Erin Sullivan Sisk, RN 06/05/13 1051	Discontinued by:	Automatic Discharge Provider 06/07/13 1736 [Patient Discharge]
Questions:	Reason For Social Work Consult Equipment (DME) Comment - please arrange for him to be fitted for a LifeVest		

Consult to Cardiology [17029085]		Discontinued	
Ordering user:	Catherine S Gallier, RN 06/01/13 1150	Ordering provider:	Steven W. Marra
Authorized by:	Steven W. Marra	Frequency:	Once 06/01/13 1142 - 1 Occurrences
Electronically signed by:	Catherine S Gallier, RN 06/01/13 1150		
Electronically cosigned by:	Steven W. Marra 06/05/13 1134 for Discontinue on Transfer		
Discontinued by:	Victor A. Gomez, PA-C 06/05/13 1051		
Questions:	Reason for Consult? VT Did you call the consulting provider? Yes Comment - 7943950		

Comments:

Answering service called. Consult placed for pt to be seen today. M Patel on call and notified.

Consult to Nutrition Services [16901901]

Completed

Ordering user: Jeffrey Allen Travis, MD 05/29/13 1827
 Authorized by: Jeffrey Allen Travis, MD
 Electronically signed by: Jeffrey Allen Travis, MD 05/29/13 1827
 Released by: Mitzi K Stewart, RN 05/29/13 2017
 Questions: Reason for Nutrition Consult? Medical Nutrition Therapy
 Is this a Doctor's Order? Yes

Pastoral/spiritual care consult [16834606] Completed

Ordering user: Jeffrey Allen Travis, MD 05/28/13 1722
 Authorized by: Jeffrey Allen Travis, MD
 Electronically signed by: Jeffrey Allen Travis, MD 05/28/13 1722
 Questions: Reason for Consult? Pre-operative support

Consult to Cardiovascular Surgery [16825697] Discontinued

Ordering user: Lanneau D Lide, MD 05/28/13 1456
 Authorized by: Lanneau D Lide, MD
 Electronically signed by: Lanneau D Lide, MD 05/28/13 1456
 Released by: Angela K Mayo, RN 05/28/13 1528
 Questions: Reason for Consult? 3 vessel CAD, IMIQ, VSD
 Did you call the consulting provider? Yes
 Preferred Group if no MD previously selected? Lexington Cardiovascular 803-936-7095

Consult to Cardiovascular Surgery [16825701] Discontinued

Ordering user: Lanneau D Lide, MD 05/28/13 1456
 Authorized by: Lanneau D Lide, MD
 Electronically signed by: Lanneau D Lide, MD 05/28/13 1456
 Released by: Angela K Mayo, RN 05/28/13 1528
 Questions: Reason for Consult? 3 vessel CAD, IMIQ, VSD
 Did you call the consulting provider? Yes
 Preferred Group if no MD previously selected? Lexington Cardiovascular 803-936-7095

Statement: Bobby Ruppe

RE: Clarence Winfrey

On May 22, 2012 Clarence called me and said a wire in the rotisserie was broken. Clarence had not seen the wire. While tracing out light wires he got shocked. He jerked his neck to get away and hurt his neck. I told him that if he needed to go to the doctor to go, that worker's compensation would pay. He did not want to go to the doctor because of money and said he would be okay in a few days. I told him if he got hurt at work, worker's compensation would pay. He was told this by me several times. He did go to the doctor on the Tuesday the 27th, and they said it was not his neck, it was his heart. He was sent to the hospital and they performed surgery on him that day.

Bobby Ruppe

Service Manager

09-23-2013

Bobby Ruppe

From: Clarence Winfrey
Sent: Monday, May 27, 2013 12:27 PM
To: Bobby Ruppe
Subject: Re: They can't do anything

Wire in rotisserie broken did not see traced out light wire and got hit by power jerked my neck to get away from rotisserie I do not want to lose my job from being hurt

Sent from my iPad

On May 27, 2013, at 12:21 PM, "Bobby Ruppe" <Bobby.Ruppe@asi-cfc.com> wrote:

> If you did it at work workers comp should pay we will have to talk to Susan tomorrow go ahead and do me a letter on what happened and email it to me

>

> Sent from my iPhone

>

> On May 27, 2013, at 11:52 AM, "Clarence Winfrey" <clarence.winfrey@asi-cfc.com> wrote:

>

>> They can't do anything for neck pain I've been trying to stay away med help do to money but if I have to go to hospital that's means I'm hurt I I'm trying to avoid

>>

>> Sent from my iPad

>>

>> On May 27, 2013, at 11:47 AM, "Bobby Ruppe" <Bobby.Ruppe@asi-cfc.com> wrote:

>>

>>> What did they say

>>>

>>> Sent from my iPhone

>>>

>>> On May 27, 2013, at 11:15 AM, "Clarence Winfrey" <clarence.winfrey@asi-cfc.com> wrote:

>>>

>>>>

>>>>

>>>> <photo.JPG>

>>>>

>>>>

>>>>

>>>> Sent from my iPad

5-23-13

DRIVERS DAILY LOG

START TIME: 5:30

END TIME: 1:30

DATE: 5/22/2013

DRIVER: HI57

BEGINNING MILEAGE: 03011.9

ENDING MILEAGE: 03187.3

Store Name and Number: Publix 0067

Mileage Start: 03011.9 Mileage End: 03031.6

Activity: Driving

Activity: On Duty

Start Time: 5:30

End Time: 6:00

Start Time: 6:00

End Time: 7:45

Notes: Found big problem and I got shocked hard

Store Name and Number: Wall mart 514

Mileage Start: 03031.6 Mileage End: 03097.4

Activity: Driving

Activity: On Duty

Start Time: 7:45

End Time: 9:00

Start Time: 9:00

End Time: 10:15

Notes:

Store Name and Number: Wall mart 881

Mileage Start: 03097.4 Mileage End: 03147.5

Activity: Driving

Activity: On Duty

Start Time: 10:15

End Time: 11:30

Start Time: 11:30

End Time: 12:15

Notes:

Store Name and Number:

Mileage Start: Mileage End:

Activity:

Activity:

Start Time: End Time: Start Time:

End Time:

Notes:

Store Name and Number:

Mileage Start: Mileage End:

DRIVERS DAILY LOG

START TIME: 8:00
END TIME: 3:30

*Clarence
Winfrey*

DATE: 5/23/2013
DRIVER: HI57

BEGINNING MILEAGE: 03189.6

ENDING MILEAGE: 03257.9

Store Name and Number: <u>Wall mart 881</u>			
Mileage Start: <u>03189.6</u>		Mileage End: <u>03196.4</u>	
Activity: <u>Driving</u>	Activity: <u>On Duty</u>		
Start Time: <u>8:00</u>	End Time: <u>8:30</u>	Start Time: <u>8:30</u>	End Time: <u>3:30</u>
Notes: <u>Went to whaleys two times then get call none of</u> <u>The fryers are working go back they lost power going to fryers</u>			

Store Name and Number: _____			
Mileage Start: _____		Mileage End: _____	
Activity: _____	Activity: _____		
Start Time: _____	End Time: _____	Start Time: _____	End Time: _____
Notes: _____			

Store Name and Number: _____			
Mileage Start: _____		Mileage End: _____	
Activity: _____	Activity: _____		
Start Time: _____	End Time: _____	Start Time: _____	End Time: _____
Notes: _____			

Store Name and Number: _____			
Mileage Start: _____		Mileage End: _____	
Activity: _____	Activity: _____		
Start Time: _____	End Time: _____	Start Time: _____	End Time: _____
Notes: _____			

Store Name and Number: _____			
Mileage Start: _____		Mileage End: _____	
Activity: _____	Activity: _____		
Start Time: _____	End Time: _____	Start Time: _____	End Time: _____
Notes: _____			

Store Name and Number: _____			
Mileage Start: _____		Mileage End: _____	
Activity: _____	Activity: _____		
Start Time: _____	End Time: _____	Start Time: _____	End Time: _____
Notes: <u>I'm going to a friend doctor tonite to look at my neck he says sounds like wipe lash</u>			

Lunch Hours: _____ Driving Hours: 1 Labor Hours: 7

Standby Hours: _____

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

Proudly representing injured workers
for over 25 years

Preston F. McDaniel
Justin S. Byars
Matthew Robertson
OF COUNSEL
Michael Johnson, P.C.

Telephone (803) 771-7211

Facsimile (803) 252-0709

October 16, 2013

VIA EMAIL: rhughey@mgclaw.com
Landon L. Hughey, Esquire
McAngus Goudelock & Courie, LLC
Post Office Box 12519
Columbia, South Carolina 29211

RE: CLARENCE B. WINFREY, JR. v. ARCHWAY SERVICE, INC.
WCC File No. 1306305

Dear Rocky:

In reference to the Subpoena that we received today by mail October 16, 2013. Obviously we did not receive the 15 day required notice and therefore you do not have proper service and so we will not be attending the Deposition on the 21st.

Second, it is my opinion that the only thing that is pending before the Commission is our request for reinstatement of benefits based on whether or not your clients can established that they conducted a good faith investigation prior to stopping benefits.

However, because I want to make sure that nothing stupid happens at that Hearing especially considering everything we have given you, I am going to go ahead and file a Form 50 and after I file that you will have every right to take Mr. Winfrey's Deposition and I will be glad to waive notice and will not-require any notice once I get that filed. I am going to try to get that out of here by tomorrow but if not it will be filed as soon as I get back from Comp Camp.

Attached is a statement we just received from Mr. Winfrey's doctor.

If you have any questions give me a call.

Sincerely yours,



Preston F. McDaniel

PFM/rmt

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 1306305

RECEIVED

SEP 27 2013

(FRONT DESK)

SC Workers' Comp Comm

C LARENCE WINFREY,

Employee,

Claimant,

vs.

ARCHWAY SERVICES INC,

Employer,

AND

AMERICAN FIRE & CASUALTY
INSURANCE COMPANY C/O LIBERTY
MUTUAL INSURANCE

Carrier,

Defendants.

MOTION TO QUASH SUBPOENA
FOR ATTENDANCE AT
DEPOSITION AND PRODUCTION
OF ADJUSTER'S FILE

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION AND PRESTON
F. MCDANIEL, ESQUIRE:

COMES NOW Terri Hughes, by and through counsel for the Defendants, and files this, her Motion to Quash a Subpoena served on her by Claimant on September 18, 2013 commanding her attendance at a deposition in Columbia, South Carolina on October 2, 2013 and demanding that Ms. Hughes produce her entire claim file for investigation into Defendants' decision to deny compensability of the claim (See Exhibit 1).

In support of her Motion, Ms. Hughes states as follows:

The Claim File

1. Ms. Hughes is an employee of Liberty Mutual Insurance Company.
2. Ms. Hughes is, and has at all times during this pendency of this matter been, a resident of

the State of North Carolina.

3. No courts, tribunals, commissions, and/or officers within the State of South Carolina have authority to issue or enforce a subpoena in the State of North Carolina.
4. No courts, tribunals, commissions, and/or officers within the State of South Carolina have authority to compel compliance with a subpoena served on a North Carolina resident.
5. The information sought to be compelled by the subpoena is protected as privileged attorney-client communication and/or work product.
6. Upon information and belief, the purpose of obtaining these documents is to question, harass, and intimidate Ms. Hughes regarding Defendants decision to deny compensability of the underlying claim following a good faith investigation within 150 days pursuant to S.C. Code Ann. § 42-9-160(B)(3). This issue should be resolved by requesting, and at, a hearing¹.

The Deposition

1. Ms. Hughes is an employee of Liberty Mutual Insurance Company.
2. Ms. Hughes is, and has at all times during this pendency of this matter been, a resident of the State of North Carolina.
3. No courts, tribunals, commissions, and/or officers within the State of South Carolina have authority to issue or enforce a subpoena in the State of North Carolina.
4. No courts, tribunals, commissions, and/or officers within the State of South Carolina have authority to compel compliance with a subpoena served on a North Carolina resident.

¹ Defendants would also point out that Claimant has the burden of proving compensability for his alleged injuries. Defendants do not have the burden of disproving compensability. See Frady v. Pacific Mills 231 S.C. 601, 99 S.E.2d

5. The information sought to be compelled by the subpoena and during the subsequent deposition is protected as privileged attorney-client communication and/or work-product.
6. The information sought to be compelled by the subpoena is totally irrelevant to the underlying proceeding.
7. No circumstances exist demonstrating the relevancy or necessity for the appearance of Ms. Hughes at a deposition.
8. Upon information and belief, the purpose of the deposition is to question Ms. Hughes about Defendants decision to deny compensability of the underlying claim. This issue should be resolved by requesting, and at, a hearing².
9. Additionally, the purpose of Claimant's underlying subpoena for the deposition is to harass and intimidate Ms. Hughes.

S.C. Code § 42-3-140 and 42-3-150 both clearly state that the Commission may cause to be issued subpoenas to take depositions and to compel the attendance of witnesses. However, S.C. Code § 1-23-320(C) states that: "[d]epositions must be taken in accordance with and subject to the same provisions, conditions, and restrictions as apply to the taking of like depositions in civil actions at law in the Court of Common Pleas."

It is well settled in this State that a subpoena issued to an out-of-state witness is legally ineffective to compel the attendance of such witness at a trial in this State. See Vaught v. Nationwide Mut. Ins. Co., 156 S.E.2d 627, 250 S.C. 65 (S.C. 1967). This concept is further bolstered by the language of SCRCP 45(c)(3)(A)(ii) which states that "...such a person may, in order to attend trial, be commanded to travel from any such place within the state in which the

398 (S.C. 1957).

² Defendants would again point out that Claimant has the burden of proving compensability for his alleged injuries. Defendants do not have the burden of disproving compensability. See Fradv v. Pacific Mills 231 S.C. 601, 99 S.E.2d 398 (S.C. 1957).

trial is held" [emphasis added]. A subpoena issued in this State simply cannot compel an out-of-state witness to do anything.

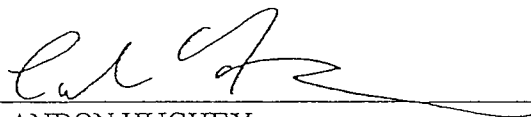
Further, this subpoena was issued in South Carolina commanding a witness located in North Carolina to appear for a deposition in North Carolina. The only connection this subpoena has to South Carolina is its issuance. Any issues regarding enforcement of this subpoena should be resolved by a North Carolina Court. Both South and North Carolina have enacted the Uniform Interstate Depositions and Discovery Act. Claimant should have complied with the existing rules and regulations contained in S.C. Code § 15-47-100 et seq. and served this subpoena pursuant to the Act.

WHEREFORE, Defendants and Terri Hughes respectfully pray that the Commission enter an Order Quashing said Subpoena and that the Commission set for hearing, prior to the issuance of any subsequent subpoena, the issue of whether or not Ms. Hughes can be compelled to appear for a deposition and/or be compelled to produce the entire claims file. Ms. Hughes also requests that this Commission issue a Protective Order pursuant to SCRCP 26(c) ordering that the deposition not be had to protect Ms. Hughes from the annoyance, embarrassment, oppression, and/or undue burden of having her deposition improperly taken and quashing and/or limiting the scope of the subpoena for "a complete copy of the adjuster's file."

Finally, Ms. Hughes requests that an award of expenses be granted to Defendants pursuant to SCRCP 37(a)(4)³.

³ "If the motion is granted, the court shall, after opportunity for hearing, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving

Defendants respectfully request that oral arguments on all issues raised in this motion be set before the Jurisdictional Commissioner. Respectfully submitted,



LANDON HUGHEY
MCANGUS GOUDELOCK & COURIE, L.L.C.
Post Office Box 12519, Capitol Station
Meridian, 1320 Main Street, 10th Floor
Columbia, South Carolina 29211-2519
(803) 779-2300
Attorneys for the Employer/Carrier

Columbia, South Carolina
September 27, 2013

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 1306305

CLARENCE WINFREY,	}	
	}	
Employee,	}	
	}	
Claimant,	}	
	}	
vs.	}	
	}	
ARCHWAY SERVICES INC,	}	
	}	
Employer,	}	CERTIFICATE
	}	OF
AND	}	SERVICE
	}	
AMERICAN FIRE & CASUALTY	}	
INSURANCE COMPANY C/O LIBERTY	}	
MUTUAL INSURANCE,	}	
	}	
Carrier,	}	
	}	
Defendants.	}	

The undersigned certifies that she is an employee at MCANGUS GOUDELOCK & COURIE, and that she has served, on the date set forth below, a copy of the document described below, in the above entitled action to the following persons, pursuant to Section 15-9-930 and Section 15-9-940 of the Code of Laws of South Carolina, 1976, by depositing a copy of same in the United States Mail, postage prepaid, addressed to:

TO: Preston F. McDaniel, Esquire
The McDaniel Law Firm
1315 Elmwood Avenue -
Columbia, South Carolina 29201

DOCUMENT: Motion to Quash Subpoena of Adjuster

DATE OF
MAILING: September 27, 2013


Cheryl A. Joiner
Legal Assistant to Landon Hughey

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

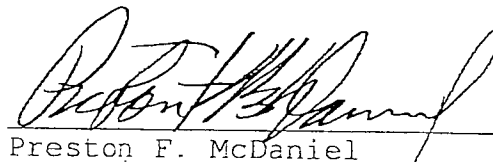
BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
WCC File No. 1306305

CLARENCE B. WINFREY, JR.)
Employee-Claimant,)
v.)
ARCHWAY SERVICE, INC.,)
Employer, and)
AMERICAN FIRE AND)
CASUALTY, CO.,)
as Carrier,)
Defendants.)

NOTICE OF DEPOSITION OF
TERRI HUGHES

TO: LONDON HUGHEY, ESQUIRE, ATTORNEY FOR THE DEFENDANTS:

YOU WILL PLEASE TAKE NOTICE that at 11:00 o'clock A.M. on the 2ND day of October, 2013, Counsel for the Claimant will take the deposition of Terri Hughes as managing agent of American Fire and Casualty, Co. at McDaniel Law Firm, 1315 Elmwood Avenue, Columbia, South Carolina 29201, upon oral examination before a Notary Public or before some other officer authorized by law to take depositions, said deposition to continue from day to day until completed. You are invited to attend and take part as is fit and proper.



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

September 18, 2013



South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
803-737-5675



WCC File #: 1306305
Carrier File #: 22209963
Carrier Code #: 00011
Employer FEIN #:

Claimant's Name: _____ SSN: _____ Employer's Name: Archway Service, Inc.
Address: _____ Address: 2316 Kings Road
City: _____ State: _____ Zip: _____ City: Shelby State: NC Zip: 28152
Home Phone: _____ Work Phone: _____ Insurance Carrier: American Fire & Casualty Co.
Preparer's Name: Preston F. McDaniel Law Firm: McDaniel Law Firm Preparer's Phone #: 803 771 7211

SUBPOENA

To: TERRI HUGHES, SENIOR CLAIMS SPECIALIST II, as Managing Agent for the Insurance Carrier and as a 30(b)(6) Representative of the Insurance Carrier, c/o LONDON HUGHEY, ESQUIRE, ATTORNEY FOR THE DEFENDANTS:

☐ YOU ARE COMMANDED to appear before the above-named Commission at the place, date and time specified below to testify in the above case.

PLACE OF TESTIMONY:

ROOM:

DATE AND TIME:

☒ YOU ARE COMMANDED to appear at the place, date and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION: McDaniel Law Firm
1315 Elmwood Avenue
Columbia, SC 29201

DATE AND TIME: October 2, 2013
11:00 o'clock a.m.

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below.

LIST OF DOCUMENTS: See attached.

PLACE: McDaniel Law Firm
1315 Elmwood Avenue
Columbia, SC 29201

DATE AND TIME: September 30, 2013
10:00 o'clock a.m.

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES:

DATE AND TIME:

THIS SUBPOENA SHALL REMAIN IN EFFECT UNTIL YOU ARE GRANTED PERMISSION TO DEPART BY THE COMMISSIONER OR AN OFFICER ACTING ON BEHALF OF THE COMMISSIONER. QUESTIONS CONCERNING THIS SUBPOENA SHOULD BE ADDRESSED TO THE FOLLOWING ISSUING OFFICER.

ISSUING OFFICER'S SIGNATURE AND TITLE

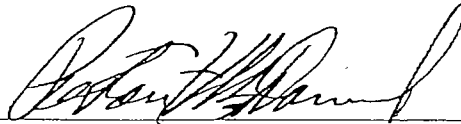
803 771 7211
PHONE NUMBER

DATE

Serve this form according to R.67-212B. Refer to R.67-212 and R.67-214 for additional information. Procedural questions may be addressed to the Judicial Department at 803-737-5765.

ATTACHMENT TO SUBPOENA AND SUBPOENA DUCES TECUM FOR TERRI HUGHES
In Re: Clarence B. Winfrey, Jr. v. Archway Service, Inc.
and American Fire and Casualty, Co.
WCC File No.: 1306305

A complete copy of the adjuster's file, any and all files, of which the adjuster has knowledge or to which the adjuster as managing agent has access to, or which is maintained by the insurance carrier and/or maintained by the employer, specifically including all documents alleged to represent a good faith investigation and to include all documents maintained in whatever format or media, including but not limited to written, typed, electronic, recorded and all photographs or recordings (audio or visual).



Preston F. McDaniel

September 18, 2013

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 1306305

C LARENCE WINFREY,

Employee,

Claimant,

vs.

ARCHWAY SERVICES INC,

Employer,

AND

AMERICAN FIRE & CASUALTY
INSURANCE COMPANY C/O LIBERTY
MUTUAL INSURANCE

Carrier,

Defendants.

**MOTION TO COMPEL
DEPOSITION OF CLAIMANT AND
FOR SANCTIONS, COSTS, FEES,
AND/OR ANY OTHER RELIEF
DEEMED APPROPRIATE BY THE
COMMISSION**

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
AND PRESTON F. MCDANIEL, ESQUIRE:

Pursuant to S.C. Code Ann. § 1-23-320 and South Carolina Rule of Civil Procedure 30, Defendants noticed Claimant's deposition for October 21, 2013 through a subpoena issued and served on October 11, 2013¹. By letter received on October 18, 2013, Claimant and Claimant's attorney informed Defendants that both refused to attend the properly scheduled deposition because Claimant was not given fifteen (15) days notice². Brett Bayne, attorney for Defendants, attended the deposition on October 21, 2013 to create a record of Claimant's willful refusal to attend the deposition³. Defendants ask the Commission to compel Claimant's attendance at a

¹ Attached as Exhibit A is the letter noticing the deposition.

² Attached as Exhibit B is the letter from Claimant's attorney stating that Claimant will not appear for the properly scheduled deposition because he did not received fifteen (15) days notice.

³ The Commission will be provided with a transcript of the deposition as soon as one is available.

future deposition, to sanction Claimant and/or Claimant's attorney for willful refusal to attend a properly scheduled and noticed deposition, and to issue an award for all costs, fees, and attorney's fees associated with the scheduling and attendance the properly scheduled deposition.

S.C. Code Ann. § 1-23-320(C) provides that "[a] party to these proceedings may cause to be taken the depositions of witnesses...depositions must be taken in accordance with and subject to the same provisions, conditions, and restrictions as apply to the taking of like depositions in civil actions at law in the court of common pleas; and the same rules with respect to the giving of notice to the opposite party, the taking and transcribing of testimony, the transmission and certification of it, and matters relating to practice apply." (emphasis added). South Carolina Rule of Civil Procedure 30(b)(1) provides that "[a] party desiring to take the deposition of any person upon oral examination shall give ten (10) days notice in writing to every other party in the action." (emphasis added).

There is no dispute that Defendants gave Claimant ten (10) days notice in compliance with S.C. Code Ann. § 1-23-320(C) and SCRCR Rule 30(b)(1). Claimant's refusal to submit to a deposition, and Claimant's attorney's instruction to his client to not appear at the deposition, is in clear violation of these rules. Defendants have incurred substantial costs associated with the scheduling, preparation, and attendance at the deposition on October 21, 2013. The Commission should order Claimant to appear for a deposition and award Defendants all costs and fees associated with the scheduling, preparation, cancellation, this motion, and the eventual rescheduling of this deposition.



LANDON L. HUGHEY
BRETT H. BAYNE
MCANGUS GOUDELOCK & COURIE, L.L.C.
Post Office Box 12519, Capitol Station
Meridian, 1320 Main Street, 10th Floor
Columbia, South Carolina 29211-2519
(803) 779-2300
Attorneys for the Employer/Carrier

Columbia, South Carolina
October 21, 2013

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 1306305

C LARENCE WINFREY,

Employee,

Claimant,

vs.

ARCHWAY SERVICES INC,

Employer,

AND

AMERICAN FIRE & CASUALTY
INSURANCE COMPANY C/O LIBERTY
MUTUAL INSURANCE

Carrier,

Defendants.

**MOTION FOR CONTINUANCE
AND/OR POSTPONEMENT OF A
SCHEDULED HEARING**

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
AND PRESTON F. MCDANIEL, ESQUIRE:

COMES NOW the Defendants, by and through their undersigned attorney, requesting a postponement or continuance of the Hearing scheduled for November 13, 2013. Pursuant to S.C. Code Ann. Reg. 67-613(B)(2), either party may request a postponement of a scheduled Hearing upon written motion and with ten days notice.

A hearing may be postponed by a showing of good cause including, but not limited to, cases where it is premature to hear the case. *See* S.C. Code Ann. Reg. 67-613(B)(1)(e). Further, a hearing may be postponed when additional discovery is necessary. *See* S.C. Code Ann. Reg. 67-613(B)(1)(c). When a hearing is set pursuant to S.C. Code Ann. § 42-9-260, the requirement to hold the hearing within sixty days is waived pursuant to S.C. Code Ann. Reg. 67-613(B)(3).

The hearing will be postponed until the following month. If the commissioner cannot hear the case by the following month, the case will be returned to the Judicial Department for reassignment.

Defendants request a postponement/continuance for the following reasons:

1. Claimant has alleged an injury by accident during the course and scope of his employment due to electrical shock on May 22, 2013.
2. Claimant has alleged injuries to several body parts including his heart.
3. Defendants denied the claim on or about September 16, 2013 following a good faith investigation pursuant to S.C. Code Ann. § 42-9-260(B)(3).
4. Claimant responded to the denial of benefits by filing a Summons and Complaint (*See* Exhibit A, Summons and Complaint with Attachments) on September 27, 2013 in the South Carolina Circuit Court alleging:
 - a. A bad faith denial of benefits;
 - b. That S.C. Code Ann. § 42-9-260 is unconstitutional and requesting a Declaratory Judgment to that effect; and
 - c. Moving for a temporary restraining order to force Defendants to pay benefits outside of the jurisdiction of the South Carolina Workers' Compensation Commission.
5. Claimant improperly sought and obtained a temporary restraining order from Judge Alison Renee Lee on October 1, 2013 ordering Defendants to pay temporary compensation benefits and provide medical care to Claimant. (*See* Exhibit B, Temporary Restraining Order).

6. Defendants filed a Motion to Dismiss and a Brief in Support of the Motion to Dismiss the temporary restraining order and the underlying Summons and Complaint with Judge Lee on or about October 2, 2013. (See Exhibit C, Brief of Defendants).
7. Judge Lee conducted a hearing on the temporary restraining order on October 8, 2013.
8. Judge Lee dismissed the temporary restraining order on October 9, 2013 stating “[t]he Commission has the sole authority to reinstate benefits if appropriate.” (See Exhibit D, Judge Lee’s Order dated October 9, 2013).
9. Judge Lee did not dismiss the Declaratory Judgment action against Defendants. (See Exhibit D, Judge Lee’s Order dated October 9, 2013).
10. Judge Lee explicitly stated that legal challenges to a statute are “...properly raised for the first time...in a declaratory judgment action before the circuit court.” (See Exhibit D, Judge Lee’s Order dated October 9, 2013).
11. Defendants filed an Answer and Counterclaim with the South Carolina Circuit Court on October 21, 2013. (See Exhibit E, Answer and Counterclaim).
12. Claimant has specifically alleged that “...the provisions of S.C. Code Ann. § 42-9-260...(A) violated the [Claimant’s] right to due process of law...(B) that the provisions of §42-9-260 are in direct conflict with provisions of the Administrative Procedures Act concerning notice and hearing...and (C) denies the [Claimant] equal protection of the laws by creating an irrational classification...” (See Exhibit A, Summons and Complaint with Attachments).
13. Claimant has also stated “...pursuant to S.C. Code §42-9-260 the constitutionality of which is the basis of the Declaratory Judgment Relief requested.” (See Exhibit A, Summons and Complaint with Attachments).

14. In addition, Claimant presented to the Circuit Court a signed Verification asserting ~~that~~ the allegations and issues raised in the Complaint are true, accurate, and with merit. (*See* Exhibit A, Summons and Complaint with Attachments).
15. Claimant has also filed a Motion for a New Trial with the South Carolina Circuit Court asking for a "...preliminary or prima facie determination that [S.C. Code Ann. § 42-9-260] is unconstitutional..." (*See* Exhibit F, Motion for a New Trial dated October 18, 2013).
16. Claimant has simultaneously requested a hearing before this Commission pursuant to S.C. Code Ann. § 42-9-260—the very statute he seeks to invalidate as unconstitutional in the ongoing companion Circuit Court case.
17. It strains belief that on one hand Claimant has argued at length to the Circuit Court ~~that~~ S.C. Code Ann. § 42-9-260 is unconstitutional and on the other hand demands relief from the Commission under the same statute. This inapposite position must be resolved before the Commission can entertain Claimant's allegations related to the workers' compensation claim—including a hearing on the denial of benefits.
18. Further, if the Circuit Court finds S.C. Code Ann. § 42-9-260 unconstitutional—as Claimant demands—the South Carolina Workers' Compensation Commission would have no guidance under the law to conduct a hearing for the suspension or termination of benefits¹.
19. Additionally, if the Circuit Court finds S.C. Code Ann. § 42-9-260 unconstitutional—as Claimant demands—the underlying purpose of the scheduled hearing before the South Carolina Workers' Compensation Commission, specifically to rule on the denial of

¹ Incidentally, Defendants would also have no guidance under the law on how to pay, terminate, and/or suspend benefits.

benefits pursuant to S.C. Code Ann. § 42-9-260, would be rendered unconstitutional.

20. In the interest of judicial economy and to avoid repetitive hearings and/or additional hearings as a result of the companion Circuit Court action filed by Claimant, the South Carolina Workers' Compensation Commission should refrain from conducting any hearings pursuant to S.C. Code Ann. § 42-9-260 in this particular claim until the Circuit Court has had an opportunity to make its ruling on the constitutionality of S.C. Code Ann. § 42-9-260.
21. Defendants contend that the Commission may only conduct the 42-9-260 hearing in this claim once the Circuit Court has ruled on the constitutionality of S.C. Code Ann. § 42-9-260 pursuant to Claimant's demand².
22. Upon information and belief, the Circuit Court will not rule on this issue prior to November 13, 2013.
23. Pursuant to S.C. Code Ann. Reg. 67-613(B)(1)(e), a hearing in this matter pursuant to S.C. Code Ann. § 42-9-260 is premature where the underlying constitutionality issues raised by Claimant and under consideration by the Circuit Court have not yet been adjudicated.
24. Additionally, Defendants have requested a continuance pursuant to S.C. Code Ann. Reg. 67-613(B)(1)(c).
25. Defendants have properly served Claimant with a subpoena for a deposition for October 21, 2013 pursuant to S.C. Code Ann. § 1-23-320 and South Carolina Rule of Civil

² In the event the Commission chooses to go forward with this hearing despite Claimant's contention that the statute authorizing the hearing is unconstitutional, Defendants would request that, should the Commission determine benefits are due, an Order be issued staying payment of benefits until the constitutionality of S.C. Code Ann. § 42-9-260 can be determined by the Circuit Court pursuant to Claimant's suit. As noted in this Motion, if S.C. Code Ann. § 42-9-260 is found to be unconstitutional, Defendants would have no guidance on how to pay, terminate, or suspend benefits.

Procedure 30

26. Claimant, by and through his attorney, has refused to appear for the properly noticed deposition because he "...did not receive the 15 day required notice..." (See Exhibit G, Letter from Preston McDaniel dated October 16, 2013).

27. Defendants have filed a Motion to Compel and for Sanctions on this issue.

28. Upon information and belief, Defendants will not be able to take Claimant's deposition prior to the scheduled hearing.

Therefore, for the foregoing reasons, the November 13, 2013 hearing should be postponed until such time as the Circuit Court can rule on the constitutionality of S.C. Code Ann. § 42-9-260 pursuant to Claimant's demands. Only after the Circuit Court has ruled on the constitutionality of S.C. Code Ann. § 42-9-260—as demanded by Claimant—will this issue be ripe for a 42-9-260 hearing before the Commission. Additionally, the hearing should be postponed because of Claimant's willful refusal to submit to a properly noticed deposition pursuant to S.C. Code Ann. § 1-23-320 and South Carolina Rule of Civil Procedure 30.



LANDON L. HUGHEY
BRETT H. BAYNE
MCANGUS GOUDELOCK & COURIE, L.L.C.
Post Office Box 12519, Capitol Station
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(803) 779-2300
Attorneys for the Employer/Carrier

Columbia, South Carolina
October 21, 2013

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

CLARENCE B. WINFREY, JR.,

Plaintiff,

v.

AMERICAN FIRE AND CASUALTY CO.,

Defendant.

C/A No. _____

SUMMONS

2013 SEP 27 PM 4:03

IN RE:

South Carolina Workers
Compensation Commission
WCC File No.: 1306305

CLARENCE B. WINFREY, JR.,

Employee-Claimant,

v.

ARCHWAY SERVICE, INC.,

Employer, and

AMERICAN FIRE AND CASUALTY CO.,

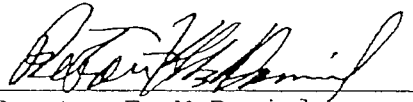
As Carrier,

Defendants.

YOU ARE HEREBY SUMMONED and required to answer the
Complaint in this action, a copy of which is herewith served
upon you, and to serve a copy of your Answer to the Complaint on

the Plaintiff's attorney, Preston F. McDaniel, at his office,
McDaniel Law Firm, 1315 Elmwood Avenue, Columbia, South Carolina
29201, within thirty (30) days after the service hereof,
exclusive of the day of such service, and if you fail to answer
the Complaint within the time aforesaid, the Plaintiff in this
action will apply to the Court for the relief demanded in the
Complaint.

Respectfully submitted,



Preston F. McDaniel
McDANIEL LAW FIRM
1315 Elmwood Avenue
Columbia, SC 29201
(803)771-7211

Attorney for the Plaintiff

September 27, 2013

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

) IN THE COURT OF COMMON PLEAS
) FOR THE FIFTH JUDICIAL CIRCUIT

CLARENCE B. WINFREY, JR.,

C/A No. _____

Plaintiff,

v.

AMERICAN FIRE AND CASUALTY CO.,

Defendant.

IN RE:

South Carolina Workers
Compensation Commission
WCC File No.: 1306305

COMPLAINT

CLARENCE B. WINFREY, JR.,

Employee-Claimant,

v.

ARCHWAY SERVICE, INC.,

Employer, and

AMERICAN FIRE AND CASUALTY CO.,

As Carrier,

Defendants.

The Plaintiff, Clarence B. Winfrey, by and through his undersigned attorney, would respectfully show unto the Court as follows:

INTRODUCTION

1. That this action is filed by the Plaintiff under the Declaratory Judgment Statute, S.C. Code §15-53-10, 20, 30, et seq. to determine whether the provisions of S.C. Code §42-9-260 (B) of the S.C. Workers' Compensation Act which provides for the termination or suspension of compensation benefits within one hundred fifty (150) days from the date of the injury without a hearing is unconstitutional and in violation of the Plaintiff's rights to due process of law in violation of The United States Constitution Amendment XIV, §1 and Amendment V, and the S.C. Constitution Article I, §3 and 22, and/or is volative of the provisions of the Administrative Procedures Act, wherein §42-9-260 deprives the Plaintiff of his property interest without providing the Plaintiff with a hearing prior to the termination of said benefits. Thus this denies him his due process rights and equal protection under the law and specifically the right to notice and an opportunity to be heard before a termination of his compensation payments. Where there is either a deprivation of liberty or a property interest, the individual has a right to a hearing prior to a determination or termination of that property interest.

2. That as a result of his work-related injury which occurred in Richland County on May 22, 2013, which was timely and properly reported to his employer Archway Service, Inc. who