

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM SOUTH CAROLINA  
WORKERS' COMPENSATION COMMISSION

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Appellate Case No. 2014-001816

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**RECEIVED**

OCT 29 2015

SC Court of Appeals

Clarence Winfrey, Employee, ..... Appellant,

v.

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

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FINAL REPLY BRIEF OF APPELLANT

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

Attorney for Appellant

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Attorney for Appellant

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PRELIMINARY NON-RESPONSIVE ARGUMENT:  
CONSTITUTIONAL ESTOPPEL/JURISDICTIONAL ISSUES

The Court should strike and not consider the unresponsive Argument made by Respondents captioned, **"CONSTITUTIONAL ESTOPPEL/JURISDICTIONAL ISSUES"**.

On pages 7 through 11, the Respondents make an entirely separate non-responsive argument to any of the issues raised on appeal; which is not even captioned, set out or asked to be considered as being an Additional Sustaining Ground. In fact, the entire basis of the argument is not in reference to this appeal or anything decided by the Commission, but is in fact in reference to a separate and distinct Circuit Court Declaratory Judgment action concerning the constitutionality of a part of the Statute.

First, these issues were not appealed from Commissioner Barden's Order to the Full Commission and/or to this Court and are therefore not properly before the Court. Therefore not being raised are waived and are not preserved for appellate review. Shealy v. Aiken County, 341 S.C. 448, 535 S.E.2d 438, 459-460 (2012).

Second, and more importantly, the SC Workers' Compensation Commission has absolutely no authority or jurisdiction, nor can the Commission rule on the constitutionality of a Statute. Travelscape, LLC v. SC Dept. of Revenue, 391 S.C. 89, 705 S.E.2d 28 (2011). The appropriate way, our Appellate Courts have held, to

challenge the constitutionality of a Statute before an Administrative Tribunal is either by a Declaratory Judgment action or by appeal.

"As stated in Video Gaming (Video Gaming Consultants, Inc. v. SC Dept. of Revenue, 342 S.C. 34, 535 S.E.2d, 642 (2000)), '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 appropriate remedy under the circumstances. **The Agency** and the ALJ cannot rule on the constitutionality issue. In fact, requiring the Agency or ALJ to rule on the constitutionality of Act 189 would violate the separation of powers doctrine. Thus, the Statute does not apply in cases where the sole issue is whether a statute or other legislative action is constitutional.

The Circuit Court erred in dismissing the Declaratory Judgment **and injunction causes of action** and the case should be remanded. In doing so, we want to clarify that simply because a party can file a Declaratory Judgment action challenging the constitutionality of a Statute in Circuit Court does not mean that a party does not have to follow the Revenue Procedures Act when applicable." Ward v. State, 343 S.C. 14, 538 S.E.2d 245 (2000).

The Workers' Compensation Commission has exclusive jurisdiction over matters before it under the Workers' Compensation Act, but has no jurisdiction outside of that and the Circuit Court and our Appellate Courts have exclusive jurisdiction over Declaratory Judgment actions, SC

Code §15-53-10, 20, 30, et. seq.

Therefore, because the Respondents did not appeal these issues to the Full Commission, and further, and more importantly, because they base this jurisdictional argument on a totally separate and distinct cause of action filed in the Circuit Court over which the Commission had no jurisdiction (but which does not in any way effect the jurisdiction of the Commission over the issues before it), the argument made by the Respondents should be stricken as non-responsive and further should be stricken as being improperly before the Court and further because it is totally wrong.

#### ARGUMENTS

**I-IV. BY WAY OF REPLY TO RESPONDENTS' ARGUMENTS I-IV, THE APPELLANT WOULD MAKE A GENERAL ARGUMENT AS TO THE LACK OF SUPPORTING LEGAL AUTHORITY.**

In reference to Arguments I-IV in the Respondents' Brief, the Appellant would simply note and reply that the Respondents' cite to no statutory or legal precedent as to any of the positions taken in the Respondents' Brief or contrary to the Arguments and authority cited by Appellant.

Further in reference to Argument I, the Appellant was found not to be at maximum medical improvement (MMI) and the request for benefits was for temporary total compensation and for such medical care before MMI as was found to be causally related by the doctors. The Full Commission should have

ruled as the Hearing Commissioner ruled that the focus of the treatment at that point was not on anything other than his heart related problems and any decision on other medical problems should be deferred until the medical doctors addressed those issues. Remember, in reference to medical care, this was not a request for an Award for any type of disability benefits but was simply that, a request for medical care for problems related to the accident. Prior to maximum medical improvement, a claimant's right to medical care should never be foreclosed. At a final hearing on an award for permanent disability or loss of use, the claimant is foreclosed concerning all issues that are addressed or could have addressed at that time.

Specifically as to Argument II and III, here again, the Respondents do not contest the legal authority or the legal position under law taken by the Appellant.

As to Argument IV again, the Respondents do not assert any legal authority contrary to that cited by the Appellant nor do they challenge what the statutory provisions of both the Administrative Procedures Act and the Workers' Compensation Act require the Commission to do. This case and this Order issued by the Full Commission cries out to this Court to require the Commission to comply with its mandatory statutory requirements to make its own decisions. Its refusal to make those findings and to follow the specific statutory requirements placed upon the Commission in making

its own findings and conclusions violates one of the fundamental safeguards put in place by this Court, our Supreme Court and by the Legislature which places the responsibility to make both factual and legal decisions in one singular Commissioner as reviewed by three Commissioners but also which specifically requires that they set out in detail the basis for the decision made. Compliance with the law is mandatory and it is a denial of fundamental due process for the Commission to abdicate that most sacred responsibility to set out in detail the factual basis of its decision where a claimant's right to trial by jury has been taken away.

CONCLUSION

By way of Reply and in addition to the arguments made in Appellant's Brief, the relief requested by the Appellant should be granted.

Respectfully submitted,



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

Attorneys for Appellant

October 10/27, 2015

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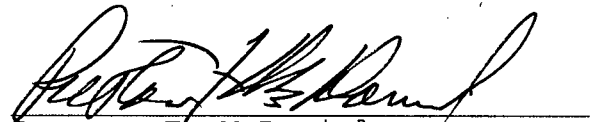
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CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Reply Brief  
of Appellant complies with Rule 211(b), SCACR.

Dated: 10/27, 2015



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MCDANIEL LAW FIRM  
1315 Elmwood Avenue  
Columbia, South Carolina 29201  
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Attorney for Appellant

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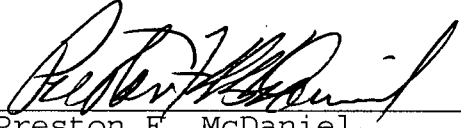
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PROOF OF SERVICE

I certify that I have served the **FINAL REPLY BRIEF OF APPELLANT** by depositing a copy of it in the United States Mail, postage prepaid, on 10/29, 2015 addressed to: Brett H. Bayne, Esquire; McAngus, Goudelock & Courie; Post Office Box 12519; Columbia, SC 29211.

Dated: 10/29, 2015

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

**RECEIVED** Attorney for Appellant

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