

22259

IN THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA WORKERS' COMPENSATION

COMMISSION APPELLATE PANEL

WCC File No. 1319471

Case No. 2015-001918

RECEIVED
DEC 31 2015
SC Court of Appeals

Daniel Davis, Employee, Appellant,

v.

ABC Amusements, Inc., Employer and SC Uninsured Employers Fund, Carrier, Respondents.

RECORD ON APPEAL

Joseph T. McElveen, Jr., Esquire
The Bryan Law Firm of S.C., L.L.P.
Bar #: 3803
17 E. Calhoun Street
P.O. Box 2038
Sumter, SC 29151-2038
(803) 775-1263
Attorney for the Appellant

Amy V. Cofield, Esquire
Cofield Law Firm
809 S. Lake Dr.
Lexington, SC 29072
(803) 951-0389
Attorney for the Respondents

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STATE OF SOUTH CAROLINA)
)
COUNTY OF LAURENS)

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION
COMMISSION

WCC File Nos. 0715584

Tarrant Grant,)
) Employee,)
))
) Claimant,)
) vs.)
))
UTI Integrated Logistics, Inc.,)
))
) Employer,)
))
) and)
))
American Home Assurance Co.,)
))
) Carrier,)
))
) Defendants.)

ORDER

Date of Hearing: Held in Newberry, South Carolina on August 9, 2012, per notices timely and properly served on all parties of interest.

Appearances: Claimant was represented by Thomas Fowler. Defendants were represented by Suzanne Boulware Cole of Collins & Lacy, P.C.

Purpose of Hearing: To determine issues as set forth on Forms 50 and 51.

Commissioner: The Honorable T. Scott Beck

Filed: December 6, 2012

STATEMENT OF THE CASE

Per Order filed on March 13, 2012, Claimant was awarded permanent partial disability. Defendants paid the order twenty-three days later on April 5, 2012. Claimant filed a Form 50, requesting fines and penalties for late payment of the Order. Defendants asserted the Order was paid timely, so no fines or penalties were due

STIPULATIONS

Counsel for all parties stipulated at the hearing to the following:

1. The purpose of the hearing is to determine the issues set forth in the hearing notice and issues pled in Forms 50 and 51.
2. Notice of the hearing was timely and properly served upon all parties of interest.
3. The venue as set in Newberry County is proper, and was agreed upon by all parties.
4. Without objection, the Commission's file is made a part of the record, excluding any unstipulated medical reports and/or self-serving declarations.
5. The original order in this matter was served electronically on March 13, 2012.
6. The award was paid on April 5, 2012, 23 days following service of the order.

APA SUBMISSIONS

Pursuant to provisions of the South Carolina Workers' Compensation Act and the South Carolina Code, the following medical reports were submitted as direct evidence without objection:

Claimant's Submissions:

EXHIBITS

1	Emails between attorneys regarding payment	3/13/12 thru 4/5/12	1-37
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Defendants submitted no evidence pursuant to the APA.

EVIDENCE OF THE CASE

No testimony was taken at the hearing because the parties stipulated to the date of service of the Order and payment of the Order. The only issue was whether the Order was paid timely under the Act.

FINDINGS OF FACT

1. The parties stipulated the original order in this matter was served electronically on March 13, 2012.
2. The parties further stipulated the award was paid on April 5, 2012, twenty-three (23) days following service of the Order.
3. Regulation 67-213(A) addresses service of Orders and is silent as to when service is complete as it relates to electronic service.
4. The Commission, as a matter of policy, has applied the 5-day rule for electronic service specified in 67-213(A)(2). **For purposes of determining timeliness of appeals.**
5. Utilizing the 5-day rule, service was deemed complete on March 18, 2012. Payment would have been due on March 25, 2012, per §42-9-240. Payment would have been overdue on April 8, 2012.

- P
6. Payment of the order on April 5, 2012, was timely.
 7. As a result of the previous findings, Claimant's request for fines, fees, penalties and interest is denied.

CONCLUSIONS OF LAW

1. Reg. 67-213(A) addresses when service of Orders via certified mail and first class mail is deemed complete. It does not address when electronic service is deemed complete.
2. Reg. 67-213(A)(2) provides that, "When service is made by first class mail, five days are added to the date of mailing."
3. Section 42-9-240 provides that an award shall become due seven days form the date of such an award.
4. Section 42-9-290 provides that if an award is not paid within fourteen day of the date it becomes due, a ten percent penalty is due.

ORDER

Upon review of the evidence presented and the applicable statutory sections, regulations and case law, **IT IS HEREBY ORDERED** Claimant's request for fines, fees, penalties and interest is denied.

IT IS SO ORDERED.



T. Scott Beck, Commissioner

CERTIFICATE OF SERVICE

This is to certify the undersigned has this date served this order in the above entitled action upon all parties to this cause by sending an electronic copy hereof by electronic mail addressed to the attorney or attorneys for said parties

or by depositing a copy hereof, postage paid, in the United States certified mail addressed to any unrepresented party.
December 6, 2012

By: Amy Bracy, Administrative Assistant to Commissioner Beck

South Carolina Workers' Compensation Commission

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



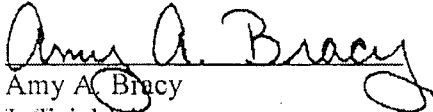
WCC File #: 1319471

Date of Injury: 10/02/2013

ADMINISTRATIVE
ORDER

Daniel Davis v. ABC AMUSEMENTS, INC.
WCC File No: 1319471

The Request for Commission Review in the above captioned case is dismissed. It was not timely filed pursuant to R.67-701 and R.67-205 D.


Amy A. Bracy
Judicial Director

Date: June 3, 2015

CERTIFICATE OF SERVICE

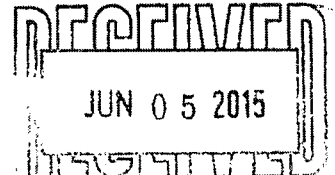
I hereby certify on June 3, 2015, I served this document on the parties listed below by electronic mail or depositing a copy hereof, postage prepaid, in the United States mail and addressed as follows:

John R. Moorman
Joseph T. McElveen Jr
Bryan Law Firm
P O Box 2038
Sumter, SC 29151

Amy V. Cofield
Cofield Law Firm
809 South Lake Drive
Lexington, SC 29072

Lisa C. Glover
P.O. Box 210039
COLUMBIA, SC 29221-0039

By: Kim S. Falls, Judicial Department



SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
JUDICIAL CONFERENCE DECISION AND ORDER

Daniel Davis v ABC Amusements
SCWCC: 1319471
Commissioner: Beck

This matter was heard before the South Carolina Workers' Compensation Full Commission in Judicial Conference on **Motion to Reinstate**. The Commissioners considered the matter and ordered the matter handled in the following manner:

IT IS, THEREFORE, ORDERED the pending appeal of the Administrative Order of the Commission hereby;

Dismissed as Interlocutory. Set for Oral Argument.

IT IS, THEREFORE, ORDERED the pending motion be, and hereby is;

Granted. Denied. Dismissed Set for Hearing.

BEFORE THE;

Hearing Comm. Jurisdictional Comm. Full Commission.

IT IS, THEREFORE, ORDERED this matter be, and hereby is; remanded to take such action and enter a Order consistent with the Court's directive.

Remand to Panel as indicated below.

<input type="checkbox"/> Barden	<input type="checkbox"/> James	<input type="checkbox"/> Taylor
<input type="checkbox"/> Beck	<input type="checkbox"/> Campbell	<input type="checkbox"/> Wilkerson
	<input type="checkbox"/> McCaskill	

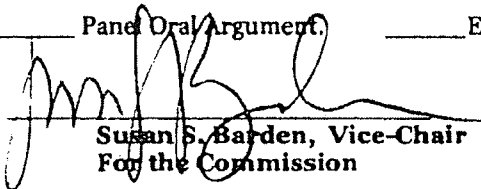
Remand for Order consistent with the Order of the Court.

Remand to the Hearing Commissioner.
 Remand to the Jurisdictional Commissioner.

Other: _____

Remand: Panel Oral Argument. En Banc Oral Argument.

AND IT IS SO ORDERED.


Susan S. Barden, Vice-Chair
For the Commission

Columbia, South Carolina

7/17 2015

CONCURRING:

Commissioner Susan S. Barden
Commissioner Melody James
Commissioner Aisha Taylor
Commissioner Avery Wilkerson
Commissioner Michael Campbell
Commissioner Gene McCaskill

NOT PARTICIPATING:

DISSENTING:

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY THE UNDERSIGNED HAS THIS DATE SERVED THIS ORDER IN THE ABOVE ENTITLED ACTION UPON ALL PARTIES ELECTRONICALLY OR BY DEPOSITING A COPY HEREOF, POSTAGE PAID, IN THE UNITED STATES MAIL

This 17th day of August, 2015.

By: 
SCWCC Judicial Department

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 1319471

Daniel Davis,
Employee,

Claimant,

ABC Amusements, Inc.,
Employer,

AND

WC Uninsured Employers Fund,
Carrier,

Defendants.

ORDER OF THE COMMISSIONER

STIPULATIONS

Hearing: Held in Columbia, South Carolina on February 12, 2015.

Appearances: Claimant represented by John R. Moorman., Esquire, of the Bryan Law Firm.
Defendant, ABC Amusements, Inc., represented by George Miars, Esquire and Defendant, WC Uninsured Employers Fund represented by Amy Cofield, Esquire, of Cofield Law Firm.

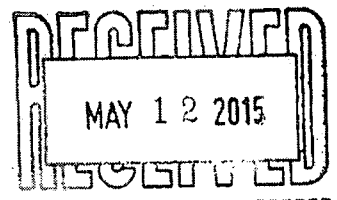
Purpose of Hearing: To determine the issues as set forth on Form 50, and any other issues which may have timely come before the Commissioner

Decision and Order: T. Scott Beck, Chairman, South Carolina Workers' Compensation Commission, Commissioner

Filed: **May 12, 2015**

Counsel for all parties stipulated at the hearing to the following issues:

1. The purpose of the hearing was to determine the issues as set forth in the Form 50, and any other issues which may have timely come before the Commission.



2. Notice of the hearing was timely and properly served upon all parties of interest.
3. Venue, set in Lexington County, is proper as agreed upon by all parties.
4. Claimant's average weekly wage and compensation rate are \$320.00, \$213.34, respectively.

The Claimant seeks benefits under the South Carolina Workers' Compensation Act based upon an accidental injury to his right leg (knee) occurring on October 2, 2013 while in the employ of Defendant Employer and, therefore, the South Carolina Workers' Compensation Commission has jurisdiction of this case.

APA SUBMISSIONS

The following documents were submitted without objection pursuant to the Administrative Procedures Act:

Claimant's Submissions

APA #	NAME OF PROVIDER/OTHER	DATE(S) OF RECORD	PAGE #
1	Baptist Easley Hospital	10/02/13-10/07/13	01-42
2	Dr. David Boyer, Upstate Bone and Joint	10/14/13	43-44
3	Dr. David Woodbury, Lakeside Orthopaedic Center	03/12/14-08/12/14	45-57
4	Clarendon Health System	03/18/14-03/27/14	58-139
5	Palmetto Imaging, MRI of right knee	02/17/14	140-145
A	Letter from SCWCC dated 12/4/13	12/4/13	

Defendants' Submissions

APA #	NAME OF PROVIDER/OTHER	DATE(S) OF RECORD	PAGE #
A	Deposition of Daniel Davis <i>Pollack v. Southern Wine & Spirits of America</i>		

STATEMENT OF THE CASE

Claimant claims that he sustained an injury to his right leg (knee) on October 2, 2013 when he stepped out of his work truck and into a hole in the ground. Claimant alleges injuries to his right leg.

Defendants deny that the injury occurred as claimed by the Claimant and deny that he is entitled to any relief under the South Carolina Workers' Compensation Act.

EVIDENCE OF THE CASE

Claimant originally treated at Baptist Easley Hospital beginning on October 2, 2013, where he complained of right knee and leg pain that was caused from stepping out of his work truck and into a hole in the ground. (Claimant's APA p.2) At Baptist Easley Hospital, Claimant had pain and swelling in his right knee as well as restrictions in the range of motion of his right knee. (Claimant's APA p.9) An x-ray of Claimant's right knee revealed no fractures. (Claimant's APA p.15) At discharge, Claimant's right knee was placed in an ace bandage, Claimant was given crutches and was excused from work until October 7, 2013. (Claimant's APA pp. 10-11) Additionally, Claimant was referred to Dr. Boyer at Upstate Bone and Joint due to the extent of his injury. (Claimant's APA p.9) On October 7, 2013, Claimant returned to Baptist Easley Hospital with continued pain, swelling, and inability to bear weight on his right knee. (Claimant's APA p.23) Due to these continued complaints, Claimant was excused from work by the emergency department at Baptist Easley Hospital until October 9, 2013. (Claimant's APA p.33) Claimant returned to work on October 10, 2013 and was wearing an ace bandage on his right knee and using crutches. While at work on October 14, 2013, Claimant was stuck in traffic on the way to an event and was late to the event. Claimant had been late on two prior occasions and due to being late on a third occasion, Claimant was terminated from his employment with the Defendant, ABC Amusements, Inc., on October 14, 2013. Claimant testified that his termination by Defendant, ABC Amusements, Inc., under these circumstances was justified. On October 14, 2013, Claimant saw Dr. Boyer. (Claimant's APA p.43) Due to Claimant's complaints, Dr. Boyer recommended an MRI of Claimant's right knee and placed Claimant in a knee

brace. (Claimant's APA p.44) However, the Defendant denied Claimant's claim and did not approve the MRI of Claimant's right knee.

Eventually, Claimant received an MRI on his right knee at his own expense at Palmetto Imaging in Florence, South Carolina on February 17, 2014. (Claimant's APA p.140) The MRI revealed a bucket handle tear of Claimant's lateral meniscus and derangement of the posterior horn of the medial meniscus. (Claimant's APA p.45) Following the MRI of Claimant's right knee, Claimant was treated by Dr. David M. Woodbury at Lakeside Orthopaedic in Manning, South Carolina for the injury to his right knee. On March 27, 2014, Dr. Woodbury performed a right knee arthroscopy on Claimant's right knee. (Claimant's APA p.62-64) Prior to surgery, Claimant's movement was restricted significantly by the injury. Claimant testified that the employment that he was performing when injured and throughout his working life was primarily manual labor and physical in nature. Following surgery, Claimant was given work restrictions by Dr. Woodbury and was unable to work from the date of surgery until August 12, 2014. On August 12, 2014, Dr. Woodbury placed Claimant at maximum medical improvement, released Claimant to full work duty without restrictions, and assigned Claimant a 1% permanent impairment rating to the whole person. (Claimant's APA p.56)

FINDINGS OF FACT

Based on the evidentiary submissions, I hereby find as follows:

1. Claimant, Daniel Davis, was an employee of ABC Amusements, Inc.
2. The venue is proper in the County of Lexington.
3. The notice of Hearing was timely and properly served upon all parties of interest.
4. The claim was timely filed with the S.C. Worker's Compensation Commission.
5. The Claimant's average weekly wage is \$320.00, yielding a compensation rate of \$213.34.

6. The Claimant suffered a compensable injury to his right leg (knee) on October 2, 2013 while stepping out of his work truck and into a hole in the ground. This injury occurred in the course and scope of his employment with the Employer. Although Defendants called two co-employees who spoke of the Claimant wearing a brace on his leg and although the Claimant admitted that he had worn a brace at times, the Claimant was by all accounts was performing all of the required duties of his employment up until the day he stepped into the hole while working and went to the Baptist Easley Hospital seeking treatment for a work injury.
7. Claimant received causally related medical treatment from Baptist Easley Hospital, Upstate Bone and Joint, Lakeside Orthopaedic Center, Clarendon Health System, and Palmetto Imaging for his right leg and right knee and was found to have reached maximum medical improvement (MMI) for his right knee and right leg pain per Dr. Woodbury on August 12, 2014. Dr. Woodbury also opined that the Claimant had a 1% permanent impairment rating to the whole person.

CONCLUSIONS OF LAW

Accordingly, as provided in Section 42-17-40 of the South Carolina Code of Laws Annotated, it is the determination of this Commissioner that:

1. Claimant has satisfied his burden of proving a compensable injury to his right leg (knee).
2. Defendant is responsible for all causally related medical expenses for Claimant, as listed above. He should be reimbursed for causally related medical expenses for which he was required to pay. This will include the MRI and payments to Lakeside Orthopaedic Center advanced by counsel on behalf Claimant while treatment was denied by Defendant pursuant to Section 42-15-60 of the Code of Laws of South

Carolina. Additionally, Employer is liable for all past medical payments made by Claimant.

3. Claimant reached maximum medical improvement on August 12, 2014 and is entitled to 5% permanent partial disability to his right leg based upon the 1% permanent impairment of the whole person given by Dr. David M. Woodbury. According to Table 17-3 of the American Medical Association Guides to the Evaluation of Permanent Impairment (5th Ed.), page 527, a 1% whole person impairment converts to a 2-3% lower extremity impairment. This disability results in an award of Two Thousand and Eighty and 00/100's (\$2,080.00) Dollars. This amount shall be paid as provided in Section 42-9-230 of the Code of Laws of South Carolina.
4. Claimant made no request for future medical care. He may, however, be entitled to a review of this award based upon a change of condition, as provided in Section 42-17-90 of the Code of Laws of South Carolina.
5. Claimant's request for temporary total disability compensation (TTD) is denied because of Claimant's termination for cause. Claimant acknowledged that his termination was justified, but he asks for TTD for at least the period from the date of surgery (March 27, 2014) to the date of MMI (August 12, 2014). I conclude that his termination for cause mandates a denial of all TTD.
6. The sum of Two Thousand and Eighty and 00/100's (\$2,080.00) Dollars is to be allocated as follows: a) \$693.33 as attorney's fees pursuant to a written contract between Claimant/Employee and attorney; b) \$344.98 for costs and litigation expenses pursuant to the same contract; and c) \$1,041.69 payable to Claimant.

7. Defendant, ABC Amusements, Inc., is responsible for all benefits, but was not insured at the time of this accident. If Defendant, ABC Amusements, Inc., fails to abide by this Order and make the payments specified above, the South Carolina Uninsured Employer's Fund is responsible for such payments, with the Fund maintaining all subrogation rights and other rights against Defendant, ABC Amusements, Inc., as are provided by law.

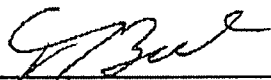
ORDER AND AWARD

IT IS THEREFORE ORDERED:

1. That the Defendants shall pay to the Claimant the sum of Two Thousand and Eighty and 00/100's (\$2,080.00) Dollars as permanent partial disability within the time specified by law, said amount to be paid as more specifically stated in the text of this order;
2. That the Claimant is denied TTD; and
3. That the Defendants shall pay the medical expenses as stated in the text of this order within the time specified by law; and

IT IS SO ORDERED.

SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION



T. Scott Beck, Commissioner

CERTIFICATE OF SERVICE

This is to certify the undersigned has this date served this order in the above entitled action upon all parties to this cause by sending an electronic copy hereof by electronic mail addressed to the attorney or attorneys for said parties or by depositing a copy hereof, postage paid, in the United States certified mail addressed to any unrepresented party.

May 12, 2015

By: Shawn DeBruhl, Administrative Assistant to Commissioner Beck

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500 • Post Office Box 1715
Columbia, South Carolina 29202-1715
(803) 737-5723 www.wcc.sc.gov



WCC File #: 1319471
Carrier File #:
Carrier Code #:
Employee FEIN #:

Claimant's Name: Daniel Davis, Jr. SSN: 250-53-9280

Employer's Name: ABC Amusements, Inc.

Address: 1711 Broome St.

Address: 286 Rocky Creek Rd.

City: Sumter State: SC Zip: 29154

City: Greenville State: SC Zip: 2961

Home Phone: (706) 254-7160

Work Phone:

Insurance Carrier: Unknown

Preparer's Name: John R. Moorman Law Firm: Bryan Law Firm

Preparer's Phone #: (803) 775-1263

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

Date of Injury or Illness: 10/02/2013

Injury Illness Repetitive Trauma Occupational Disease Physical Brain Injury Concurrent Jurisdiction

1. The claimant sustained an injury to his right knee and leg on 10/02/2013 in Lexington County, State of South Carolina. Body part(s) affected are: Right knee and leg
2. Briefly describe how the accident occurred. Claimant was leaving a festival in Irmo, South Carolina to take equipment to another festival located in North Carolina. Before leaving the SC festival, he was exiting his delivery truck and stepped into a hole in the ground, causing him to fall and felt instant pain in his right knee and leg.
3. Both the claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of injury.
4. The relationship of employer and employee existed at the time of injury.
5. At the time of the injury the claimant was performing services arising out of and in the course of employment.
6. Notice of the accidental injury was given to the Employer on 10/02/2013 in the following manner: Supervisor- Corey
7. Due to injury, the claimant is in need of (check one):
 - (a) medical examination and treatment for: right knee and leg injury
 - (b) additional medical examination and treatment for: right knee and leg injury
8. Due to injury, the claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of: date of termination (10/14/2013) to the present.
9. Due to the injury, the Claimant has permanent disability of the following nature and extent (check one):
 - (1) General Disability: Total Partial
 - (2) Specific Disability: Total Partial
 - (3) Wage Loss
- 9a. A determination of permanent disability is premature at this time.
10. Due to the injury, the claimant has a serious bodily disfigurement consisting of:
 - 10a. At the time of the injury, the Claimant was paid weekly wages of \$330.00, 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; None
11. Further grounds or unusual aspects of claim: (a) Claimant was fired without explanation after he was injured. (b) Claimant was unable to find a medical provider to treat him. Prior to surgery, his right knee "gave out" on him while walking, and he had to go to an emergency room for treatment. Claimant has since had surgery to repair the knee. (c) Claimant is informed and believes that the Employer was required to have workers' compensation coverage, but did not have it.
- 11a. List names and addresses of all physicians or other medical specialists who have seen or treated the Claimant as a result of the accident:
Baptist Easley Hospital, 200 Fleetwood Dr., PO Box 2129 Easley, SC 29641; Dr. David Boyer, Upstate Bone and Joint, 112 John St., Suite 201, Easley, SC 29640; Tuomey Healthcare System, 129 N. Washington St., Sumter, SC 29150; Lakeside Orthopaedic Center, Dr. David Woodbury, 50 E. Hospital St., Manning, SC 29102.
- 11b. To the best of your knowledge, did you have any prior permanent disability? No.
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.

Questions about the use of this form should be directed to the Claims Department at 803 737.5723. Refer to Regulations 67-204 through 67-211 and Regulations 67-601 through 67-615 as well as Reg. 67-1801.

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

14. Estimated time needed for hearing: no more than 1/2 hour

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

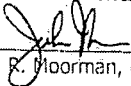
Mediation

- 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 certify I have served this document pursuant to Reg. 67-211 by delivering a copy to Amy Cofield, Esquire of Cofield Law Firm, 809 S. Lake Drive, Lexington, SC 29072 on the 23 day of September 20 14, by first class postage certified mail personal service.

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



John R. Moorman, Esquire

Attorney for Claimant
Title

jmoorman@bryanlaw.com
Email

9/23/14
Date

Questions about the use of this form should be directed to the Claims Department at 803.737.5723. Refer to Regulations 67-204 through 67-211 and Regulations 67-601 through 67-615 as well as Reg. 67-1801.

CERTIFICATE OF MAILING

I, the undersigned employee of the law offices of the Bryan Law Firm of SC, L.L.P., attorneys for Daniel Davis, Jr., do hereby certify that I have served the Defendants or counsel of record with the following document(s) by mailing a copy of the same by United States Mail, postage prepaid, to the following address this 25th day of September, 2014:

Pleading(s): Form 50- Hearing Request

Person(s) Served:

Amy V. Cofield, Esquire
Cofield Law Firm, LLC
603 South Lake Drive
Lexington, SC 29072

Daniel Davis
1711 Broome St.
Sumter, SC 29154

Lisa C. Glover, Esquire
PO Box 210039
Columbia, SC 29221-0039

ABC Amusements, Inc.
Scott Wiener, Registered Agent
286 Rocky Creek Rd.
Greenville, SC 29615

Amy Bracy
Judicial Department
SC Workers' Compensation Commission
1333 Main St.
PO Box 1715
Columbia, SC 29202

Michelle Stone

SWORN to and subscribed before me
this 25th day of September, 2014

Elizabeth W. Nesbitt

Elizabeth W. Nesbitt

Notary Public for South Carolina

My Commission expires: 05/01/2019



Claimant's Name: Daniel Davis, Jr. SSN: 250-53-9280 Employer's Name: ABC Amusements, Inc.
 Address: 1711 Broome Street Address: 286 Rocky Creek Road
 City: Sumter State: SC Zip: 29154 City: Greenville State: SC Zip: 29615
 Home Phone: (706) 254-7160 Work Phone: () - Insurance Carrier: _____
 Date of Injury: October 2, 2013
 Preparer's Name: Amy V. Cofield Law Firm: Cofield Law Firm Preparer's Phone #: (803) 951-0389

Date of Injury or Illness: 10/2/2013

Estimated time for hearing: 30 min.

Complete each information blank. Clearly specify when contentions are admitted in part and denied in part. The Employer/Carrier in answer to the claim, respectfully shows:

1. It is Admitted Denied the employee sustained an injury or illness on or about the date set forth in the Form 50. The reasons for denial are:
There has been no proof. Pending Further Investigation.
2. It is Admitted Denied both the employer and employee were subject to the Workers' Compensation Act at the time in question. The reasons for denial are:
There has been no proof. Pending Further Investigation.
3. It is Admitted Denied the relationship of employer and employee existed at the time in question. The reasons for denial are:
There has been no proof. Pending Further Investigation.
4. It is Admitted Denied at the time in question the employee was performing services arising out of and in the course of employment. The reasons for denial are:
There has been no proof. Pending Further Investigation.
5. It is Admitted Denied notice of injury was given the employer. The reasons for denial are:
There has been no proof. Pending Further Investigation.
6. It is Admitted Denied the employee Needs Is Entitled to Additional medical care as a result of injury or illness. The reasons for denial are:
There has been no proof. Pending Further Investigation.
7. It is Admitted Denied the employee is entitled to temporary total disability for the period(s) of :
There has been no proof. Pending Further Investigation.
8. It is Admitted Denied the employee is permanently disabled. The reasons for denial are:
There has been no proof. Pending Further Investigation.
9. It is Admitted Denied the employee has serious disfigurement.
10. It is contended that an average weekly wage of \$ _____ applies, according to attached Form 20 as provided by law.
11. Further contentions, grounds of defense, or unusual aspects are:

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.

Amy V. Cofield Attorney for SCUEF amy@cofieldlaw.com October 22, 2014
 Preparer's Signature Title Email Date

Refer to R.67-204 through R.67-210 and R.67-601 through R.67-615. Refer to R. 67-1801 for mediation. Questions about the use of this form may be directed to the Commission's Judicial Department at 803-737-5675 or judicial@wcc.sc.gov or mediation@wcc.sc.gov. Pursuant to R.67-606, a Form 20 must be filed with the Claims Department at least 30 days from the date of filing this form.

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO.: 1319471

Daniel Davis,)
)
Employee/Claimant,)
vs.)
)
ABC Amusements, Inc.,)
)
Employer,)
and)
)
SC Uninsured Employers' Fund,)
)
Carrier/Defendant)

CERTIFICATE OF SERVICE

I, Ami M. Meetze, an employee of Cofield Law Firm, do hereby state that I have on this 22nd day of October, 2014 served a copy of the within and foregoing **WCC FORM #51 – EMPLOYER’S ANSWER TO REQUEST FOR HEARING** upon the following individual(s), by depositing same in the United States Mail, first class, sufficient postage prepaid, with the return address clearly noted, addressed as follows:

SC Workers' Compensation Commission
Amy Bracy, Judicial Director
Post Office Box 1715
Columbia, South Carolina 29202

John R. Moorman, Esquire
Bryan Law Firm of SC, LLP
Post Office Box 2038
Sumter, South Carolina 29151

ABC Amusements, Inc.
Attn: Scott Wiener, Registered Agent
286 Rocky Creek Road
Greenville, South Carolina 29615

Lisa Glover, Esquire
SC Uninsured Employers' Fund
Post Office Box 210039
Columbia, South Carolina 29221



Ami M. Meetze, Paralegal
Cofield Law Firm
809 South Lake Drive
Lexington, SC 29072
Telephone: 803-951-0389

South Carolina Workers' Compensation Commission

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

WCC File # 1319471
 Carrier File # _____
 Carrier Code # _____
 Employer FEIN _____

Daniel Davis	250-53-9280	ABC Amusements, Inc.	
Claimant's Name	SSN	Employer's Name	
1711 Broome St.	Sumter, SC 29154	286 Rocky Creek Rd.	Greenville, SC 29615
Address	City, State Zip	Address	City, State Zip
(706) 254-7160		WC Uninsured Employers Fund	
Home Phone #	Work Phone #	Insurance Carrier	
Joseph T. McElveen, Jr.	P.O. Box 2038, Sumter, SC 29151-2038	(803) 775-1263	
Preparer's Name	Address	Phone #	

Request for Commission Review by claimant employer (check one)

The undersigned makes application for review of the findings of the Commissioner in the above captioned case. The request for review is based on the following grounds: (State the grounds of your appeal in the form of questions presented. Each question presented must contain a concise statement of one proposition of law or fact. Refer to evidence by title and exhibit number. Use additional pages, if necessary).

SEE ATTACHED SHEET FOR GROUNDS OF APPEAL

(Check one) Oral argument is is not requested. Appellant's request for oral argument is waived if not indicated on this form.

I certify that I have served this document pursuant to R.67-212 by delivering a copy to:

George Miars, Esquire, Willson, Jones, Carter & Baxley, 421 Wando Park Boulevard, Suite 100, Mount Pleasant, South Carolina 29464 and Amy Coffield, Esquire, Coffield Law Firm, 809 South Lake Dr., Lexington, SC 29072

Name _____ Address _____
 on the 27 day of May, 2015, by first class mail; personal service, certified mail.

Joseph T. McElveen, Jr. ATTORNEY FOR CLAIMANT 5/27/15
 Preparer's Signature Title Date

Check this box if you are not represented by an attorney.

If the claimant appeals and is representing himself or herself, the Judicial Department will prepare the additional copies of this form and serve this form on the opposing party. R.67-701B. Otherwise, file the original and 8 copies of this form with the Judicial Department. The appeal must be postmarked no later than 14 days from the date of service of the Hearing Commissioner's decision. R.67-205D. Attach the filing fee to this form. Attach a Form 32 if you are unable to pay the filing fee. Refer to R.67-701 through R.67-711 for additional information.

Daniel Davis
WCC: 1319471

The Claimant respectfully submits that the honorable hearing Commissioner erred as follows:

1. In denying the Claimant temporary total disability compensation from the time he was incapacitated by surgery until such compensation could be properly stopped by agreement of the parties or order of the Commission, because he was unquestionably unable to work because of his injury during this time.
2. In denying the Claimant temporary total disability compensation because of his firing, even if such firing was justified, when such firing occurred during a time when the uninsured Employer was denying that Claimant's injury was compensable, so that the Claimant was unable to get necessary medical treatment, which might have removed him from work due to his injury.
3. In denying the Claimant temporary total disability compensation because of his firing, even if such firing was justified, when such firing occurred during a time when the uninsured Employer was denying medical treatment, so that no determination could be made whether or not the Claimant was able to work without restrictions.
4. In denying the Claimant temporary total disability compensation because of his firing, even when such firing was justified, when such firing occurred during a time when the uninsured Employer was denying workers' compensation benefits making it impossible for the Commission to be sensitive to the Employer's possible motivation to "look for" a reason to fire an injured worker such as the Claimant.

If the claimant appeals and is representing himself or herself, the Judicial Department will prepare the additional copies of this form and serve this form on the opposing party. R.67-701B. Otherwise, file the original and 8 copies of this form with the Judicial Department. The appeal must be postmarked no later than 14 days from the date of service of the Hearing Commissioner's decision. R.67-205D. Attach the filing fee to this form. Attach a Form 32 if you are unable to pay the filing fee. Refer to R.67-701 through R.67-711 for additional information.

CERTIFICATE OF MAILING

I, the undersigned employee of the law offices of the Bryan Law Firm of SC, L.L.P., attorneys for Daniel Davis, do hereby certify that I have served the Defendants or counsel of record with the following document(s) by mailing a copy of the same by United States Mail, postage prepaid, to the following address this 27 day of May, 2015:

Pleading(s): Form 30- Appeal.

Person(s) Served: George Miars, Esquire
Willson, Jones, Carter & Baxley
421 Wando Park Boulevard, Suite 100
Mount Pleasant, South Carolina 29464

Amy Cofield, Esquire
Cofield Law Firm
809 South Lake Dr.
Lexington, SC 29072

Ms. Amy Bracy
S.C. Workers' Compensation Commission
Judicial Department
Post Office Box 1715
Columbia, South Carolina 29202-1715

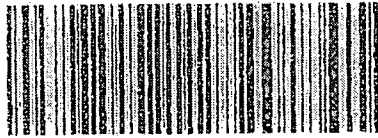
Michelle A. Stone

SWORN to and subscribed before me
this 27 day of May, 2015

Elizabeth W. Nesbitt
Elizabeth W. Nesbitt
Notary Public for South Carolina
My Commission expires: 05/01/2019

The Bryan Law Firm of SC, L.L.P.
17 E. Calhoun St.
PO Box 2038
Sumter, SC 29150

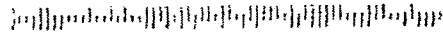
COLUMBIA
SC 290
28 MAY '15
PM 11 L



7014 2120 0002 1042 8709

Amy Cofield, Esquire
Cofield Law Firm
809 South Lake Dr.
Lexington, SC 29072

29072071509



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Updated Delivery Day: Friday, May 29, 2015

Product & Tracking Information

Postal Product: Features:
Certified Mail™

DATE & TIME	STATUS OF ITEM	LOCATION
May 29, 2015, 11:10 am	Delivered	LEXINGTON, SC 29072

Your item was delivered at 11:10 am on May 29, 2015 in LEXINGTON, SC 29072.

May 29, 2015, 7:20 am	Arrived at Unit	LEXINGTON, SC 29073
May 29, 2015, 12:13 am	Departed USPS Facility	COLUMBIA, SC 29201
May 28, 2015, 5:14 pm	Arrived at USPS Facility	COLUMBIA, SC 29201

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STATE OF SOUTH CAROLINA
BEFORE THE WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO. 1319471

Daniel Davis, Employee,

Claimant,

vs.

MOTION

ABC Amusements Inc., Employer,

WC Uninsured Employers Fund, Carrier,

Defendants.

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION, AMY COFIELD, ESQUIRE AND GEORGE MIARS, ESQUIRE, ATTORNEYS FOR DEFENDANTS:

The Claimant, by and through his undersigned attorney, hereby moves as follows:

1. On May 12, 2015, Commissioner Beck issued an Order and Decision in this matter, which was forwarded to the attorney for the Claimant by regular email on the same day.
2. The Claimant filed and served a Form 30 requesting review of the aforementioned order by mailing it to the South Carolina Workers' Compensation Commission (SCWCC) by certified mail on May 27, 2015. At the same time, a copy of the Form 30 was served upon the attorney for the State Accident Fund and upon the Employer.
3. The Judicial Department of the Commission has refused to accept the Form 30 for filing, contending that it had to be filed within fourteen days after the date it was emailed.
4. The Claimant contends that the Form 30, having been emailed, was not due until five days after the date of emailing.
5. Attached is a Decision and Order issued by Commissioner Beck on December 6, 2012 in the case of Tarrant Grant v. UTI Integrated Logistics, Inc., WCC File No. 0715584, in which he ruled that five days should be added to the due date for a Form 30 when the Decision and Order is served on a party electronically. Upon information and belief, the Claimant's attorney has been advised in the past that this is the rule for service of a Form 30, and he has found anything changing this ruling.

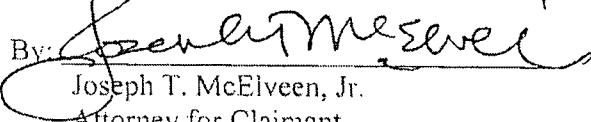
6. The applicable regulation of the SCWCC is silent as to the effective date for electronic service of an order. Service of an order by certified mail is the date on which service is noted on the return receipt. Service by first class mail is effective five days after posting.

7. Electronic service of documents is still a relatively new procedure for legal proceedings. The five day rule is a reasonable one for determining the effective day of electronic service. We know from experience that most items mailed get to their destination within five days. Although we do not have long-term experience with electronic service, we do know that such service is not always immediate. We can reasonably assess that most law offices will check their email within five days. Certainly the five day rule as to electronic service is not prejudicial to either party or the ends of justice.

WHEREFORE, the Claimant respectfully prays that the Form 30 aforementioned be accepted for filing so that the review can proceed.

Respectfully submitted,

THE BRYAN LAW FIRM OF SC, L.L.P.

By: 

Joseph T. McElveen, Jr.

Attorney for Claimant

17 East Calhoun Street

P.O. Box 2038

Sumter, S.C. 29151

(803) 775-1263

(803) 778-1300

Sumter, South Carolina

June 15, 2015

CERTIFICATE OF MAILING

I, the undersigned employee of the law offices of the Bryan Law Firm of SC, L.L.P., attorneys for Daniel Davis, do hereby certify that I have served the Defendants or counsel of record with the following document(s) by mailing a copy of the same by United States Mail, postage prepaid, to the following address this 15th day of June, 2015:

Pleading(s):

Motion

Person(s) Served:

George Miars, Esquire
Willson, Jones, Carter & Baxley
421 Wando Park Boulevard, Suite 100
Mount Pleasant, South Carolina 29464

Amy Cofield, Esquire
Cofield Law Firm
809 South Lake Dr.
Lexington, SC 29072

Ms. Amy Bracy
S.C. Workers' Compensation Commission
Judicial Department
Post Office Box 1715
Columbia, South Carolina 29202-1715

Michelle A. Stone

SWORN to and subscribed before me
this 15th day of June, 2015

Elizabeth W. Nesbitt

Elizabeth W. Nesbitt
Notary Public for South Carolina
My Commission expires: 05/01/2019

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
WCC FILE NO: 1319471

Daniel Davis, Jr.,)	
)	
Employee/Claimant,)	
)	
vs.)	
)	SC WORKERS' COMPENSATION
ABC Amusements, Inc.)	UNINSURED EMPLOYERS' FUND
)	REPLY TO EMPLOYEE/CLAIMANT'S
Employer/Defendant,)	MOTION
and)	
)	
SC Workers' Compensation Uninsured)	
Employers' Fund,)	
)	
Carrier/Defendants.)	
_____)	

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION, GEORGE MIARS, ESQUIRE, ATTORNEY FOR EMPLOYER/DEFENDANT, ABC AMUSEMENTS, INC., EMPLOYER/DEFENDANT AND JOHN R. MOORMAN, ESQUIRE AND JOSEPH T. MCELVEEN, JR., ESQUIRE, ATTORNEYS FOR THE EMPLOYEE/CLAIMANT:

The South Carolina Workers' Compensation Uninsured Employers' Fund, by and through its undersigned attorney, hereby replies to the Claimant's Motion as follows:

STATEMENT OF FACTS

On May 12, 2015 Commissioner Beck issued an Order and Decision in this matter which was served upon the parties by electronic on the same date.

The Claimant filed and served a Form 30 — Request for Hearing by mailing it by Certified Mail to the South Carolina Workers' Compensation Commission and the parties on May 27, 2015.

The Judicial Department refused to accept the Form 30 for filing stating “we are in receipt of your letter in regard to the appeal dismissal for the above-referenced matter. Please note that when an Order is sent electronically, there is no five (5) day rule for mailing as the Order is served immediately. Parties have fourteen (14) days to serve an appeal/Form 30 on the Commission and opposing party.” (See attached Exhibit “A” - Email from Kim Falls, South Carolina Workers' Compensation Commission.)

ARGUMENT

The Claimant herein contends that the Form 30 was timely filed by relying on a prior Order issued by Single Commissioner in December, 2012. That Order states that the “Commission, as a matter of policy has applied the five (5) day rule for electronic service specified in Regulation 57-213(A)(2) for purposes of determining timeliness of appeals.” There has been no indication that this Order was ever appealed or not and certainly no evidence that this issue has been decided by a higher court other than the Workers' Compensation Commission.

An Order of a Single Commissioner does not establish a “law”. And even if it had been the policy of the Workers' Compensation Commission to expand a five (5) day grace period to electronic service as it did for the mailing of service by regular mail that policy obviously no longer exists at the Workers' Compensation Commission pursuant to Kim Falls, a Judicial Analyst in the Appeals Division at the South Carolina Workers' Compensation Commission.

The Claimant has alleged that Regulation 67-213(A) addresses services of Orders and “is silent as to when the service is complete as it relates to electronic service.” This is false. There are also other regulations and court rules that clearly establish that South Carolina follows what is commonly known as the “mailbox rule,” that is, service is deemed complete upon mailing. (Regulation 67-213(B))

When you read the entire Regulation each method of service is addressed. Regulation 67-213 (A)(2) states “When service is made by **Certified Mail the date of service is the date of the addressees receipt indicated by the certified mail return receipt.**” However the next sentence states clearly “When service is made by **First Class Mail, five (5) days are added** to the date of mailing.” Regulation 67-213(B) states that the “Commission serves Hearing Notices and Form 31, Review Hearing Notices, electronically or by deposit in the United States Postal Service First Class postage addressed to the party. **Service is deemed complete upon mailing.**” If one chooses to use the United States Postal Service then the Commission has granted a five (5) day extension on its service calculation. However, it is not granted anywhere in the Statute any five (5) day extension for service of orders electronically.

One may also want to review Regulation 67-211 Service of Forms and Documents. This regulation grants the Commission in section 67-211(C) the authority “to serve other forms and documents electronically or by depositing the form or document in the United States Postal Service First Class postage addressed to the party pursuant to Regulation 67-210. **Service is deemed complete upon mailing unless the document is returned.**”

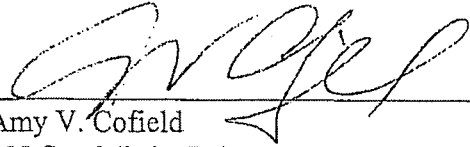
Finally, if these statutes are not explicit enough to designate that the Workers' Compensation Commission may serve orders electronically and that they are deemed served upon mailing then one could refer to the South Carolina Rules of Civil Procedure. South Carolina Rules of Civil Procedure Rule 6(B) states specifically "The time for filing notice of intent to appeal is jurisdictional and may not be extended by consent or Order." Again there is no statute, case law or other direction that ever declares that a five (5) extension is granted for electronic service by email.

Claimant's argument that it is reasonable to grant a five (5) day extension for electronic service because, "most law offices will check their e-mail within five days" is ridiculous. The five (5) day rule was extended for potential problems with the United States Postal Service NOT because law firms didn't read their mail.

Wherefore, it is Defendants position that the jurisdictional question as to the date of service of the Order is clearly the date of mailing (sending) and there is no indication of any statute or case that applies a five (5) day extension to anything other than regular US mail. Therefore, the Form 30 was not filed timely.

COFIELD LAW FIRM

By:



Amy V. Cofield

809 South Lake Drive

Lexington, South Carolina 29072

Telephone: 803-951-0389

Facsimile: 803-951-0398

Email: amy@cofieldlaw.com

Attorney for SC Workers' Compensation

Uninsured Employer Fund, Carrier/Defendant

Lexington, South Carolina

June 24, 2015

Amy Cofield

From: Falls, Kim [kfalls@wcc.sc.gov]
Sent: Wednesday, June 10, 2015 12:36 PM
To: jmcelveen@bryanlaw.com
Cc: jmoorman@bryanlaw.com; amy@cofieldlaw.com; Lisa Glover
Subject: Daniel Davis v. ABC Amusements, Inc. (1319471)

Mr. McElveen,

We are in receipt of your letter in regards to the Appeal dismissal for the above-referenced matter. Please note that when an Order is sent electronically, there is no 5 day rule for mailing as the Order is served immediately. Parties have 14 days to serve an Appeal/Form 30 on the Commission and opposing parties.

Commissioner Beck's Order was served on May 12, 2015. The Appeal/Form 30 would have needed to be served no later than May 26th, 2015. The Certificate of Service attached to the Appeal/Form 30 was dated May 27th, 2015, and the Certified Mail date from USPS was May 28th, 2015. Therefore, the Appeal/Form 30 is untimely.

That being said, we cannot take action on your letter. If you still do not agree with our actions, you will need to file a Motion.

Thanks,

Kim Falls
SC Workers' Compensation Commission
Judicial Analyst – Appeals Division
1333 Main Street, Suite 500
Post Office Box 1715
Columbia, SC 29202-1715
Phone: 803-737-5739
kfalls@wcc.sc.gov

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EXHIBIT "A"

John R. Moorman, Esquire
Joseph T. McElveen, Jr., Esquire
Bryan Law Firm of SC, L.L.P.
Post Office Box 2038
Sumter, South Carolina 29151-2038

VIA EMAIL – lglover@saf.sc.gov

Lisa C. Glover, Esquire
SC Uninsured Employers' Fund
Post Office Box 210039
Columbia, South Carolina 29221-0039

COFIELD LAW FIRM



Ami M. Meetze, Paralegal
809 South Lake Drive
Lexington, South Carolina 29072
Phone: 803-951-0389
Facsimile: 803-951-0398
Email: ami@cofieldlaw.com

STATE OF SOUTH CAROLINA
BEFORE THE WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO. 1319471

Daniel Davis, Employee,

Claimant,

vs.

ABC Amusements Inc., Employer,

WC Uninsured Employers Fund, Carrier,

Defendants.

NOTICE OF MOTION

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION, AMY COFIELD, ESQUIRE AND GEORGE MIARS, ESQUIRE, ATTORNEYS FOR DEFENDANTS:

YOU WILL PLEASE TAKE NOTICE that the Claimant, by and through his undersigned attorneys hereby moves the South Carolina Workers' Compensation for the following relief:

1. The Claimant's attorney was electronically served with a form Order from the Commission on August 17, 2015, indicating that his motion to reinstate a Form 30, Request for Review, which was denied. The Commission staff would not file the Form 30 because it was dated on the fifteenth day after electronic service of a Decision and Order.
2. The parties were given no opportunity to be heard on the motion for reinstatement. The Claimant submitted certain documents with his motion and prior to the date of the Order; but he does not know what evidence was or was not considered by the Commission. The Order has no findings of fact or conclusions of law. The Order is signed by one Commissioner, but the form text posts that all members of the Commission concurred, except for the Commissioner who issued the Decision and Order of which review is requested.
3. The Claimant respectfully requests that the Commission reconsider its order on reinstatement of his Form 30. Upon information and belief, every document from the Commission since at least December 6, 2012, has indicated that electronic service adds five days to the date of notice, similar to the manner in which first class mail is handled. Upon information and belief, nothing has been written and disseminated to members of the Bar or others indicating a change in the previous practice of adding five days. The Claimant submitted to the Commission for consideration with his motion a copy of an Order issued by Commission Chair Beck on December 6, 2012, stating that the policy of the Commission is to allow five days to be added in calculating the due date for the Form 30. (This was not an order of an Appellate Panel or the full Commission, but it states the policy as being the Commission policy.) The Claimant has also received an email from the Executive Director of the Commission on February

14, 2015 stating as follows: "The Commissioners discussed this issue and determined it would take a change in the regulation. They decided not to pursue a change in the regulations. Similar issues would be resolved on a case by case basis." The Executive Director attached a copy of Commissioner Beck's order.

4. In the alternative, if the Commission will not reinstate the Form 30, the Claimant respectfully requests that the Commission issue a supplemental order stating the factual and legal basis for the Order, so that, if this issue is appealed, the Court of Appeals will not simply remand the matter for such an order.

5. If the Commission will not change its ruling and allow reinstatement of the Form 30, the Claimant respectfully requests that he be provided copies of any transcripts of the motion hearing in this matter (or the name of the reporter who recorded the proceeding), any documents of any nature or description which were considered by the Commission in deciding the motion, and any internal documents reflecting comments or showing the signatures of members of the Commission.

6. This Claimant believes that he has been denied substantive and procedural due process, in that he has thus far been denied notice and an opportunity to be heard on his motion and his Request for Review. He is likewise being denied equal protection of the laws, in that other parties have been allowed the five extra days for notice, upon information and belief. Fundamental fairness dictates that the Claimant's Form 30 be reinstated, given the confusion about the time when electronic service becomes notice. Then the Commission can promulgate written notice to all of the policy with regard to electronic service. If this issue has been decided on a case-by-case basis, then the policy of the Commission is unconstitutional on its face, as the timely filing of the Form 30 is jurisdictional.

7. The argument may have been made that the applicable regulation does not provide extra time when service is by electronic mail as it does for other forms of service. Even if this is true, the policy of the Commission was stated to allow the extra five days. When the Commission decided that it would not follow that policy any longer, written notice to the Bar and others should have been disseminated.

8. Some additional time or fairer rule should be devised if the "five day rule" has been abandoned. Electronic service is no more instant than first class mail. One easily can envision situations where party would not get electronic notice until time has run or until he had less time than needed to review the order, review the evidence, discuss the matter with his client, and prepare a thorough Form 30.

9. The Claimant submits that he has been denied procedural due process in the manner in which his motion for reinstatement has been handled. He has been denied substantive due process in that the published policy of the Commission has not been followed and in that rules and policies have been changed without notice, effectively denying him an opportunity to be heard. He has been denied equal protection of the laws, since his request for review has been handled differently than others similarly situated. Fundamental fairness demands that his Form 30 be filed. If the issue of notice upon electronic service has been handled on a case-by-case basis, then the policy of the Commission is unconstitutional on its face.

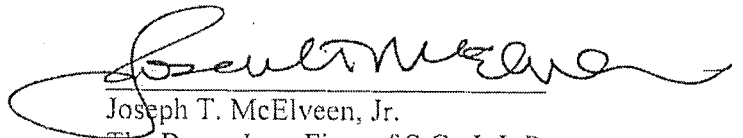
10. Attached hereto are the following:

- A. Order of Commissioner Beck in the case of Grant v. UTI Integrated Logistics, Inc., WCC File No. 0715584, dated December 6, 2012.
- B. Email from Gary Cannon, Executive Director of the Commission, dated February 15, 2013.
- C. Administrative Order 2004-11-1501 of the South Carolina Supreme Court concerning the use of electronic service on an experimental basis. This Order shows the protections needed to assure electronic service is delivered properly, and it provides for the same five day period for notice. See Rule of Civil Procedure 6(e).

WHEREFORE, the Claimant respectfully requests that the requested relief be granted before the time when a notice of appeal must be filed with the Court of Appeals.

August 27, 2015

Respectfully submitted,



Joseph T. McElveen, Jr.
The Bryan Law Firm of S.C., L.L.P.
P.O. Box 2038
Sumter, SC 29151-2038
(803) 775-1263
Attorney for the Appellant

CERTIFICATE OF MAILING

I, the undersigned employee of the law offices of the Bryan Law Firm of SC, L.L.P., attorneys for Daniel Davis, do hereby certify that I have served the Defendants or counsel of record with the following document(s) by mailing a copy of the same by United States Mail, postage prepaid, to the following address this 27th day of August, 2015:

Pleading(s):

Notice of Motion

Person(s) Served:

George Miars, Esquire
Willson, Jones, Carter & Baxley
421 Wando Park Boulevard, Suite 100
Mount Pleasant, South Carolina 29464

Amy Cofield, Esquire
Cofield Law Firm
809 South Lake Dr.
Lexington, SC 29072

Ms. Amy Bracy
S.C. Workers' Compensation Commission
Judicial Department
Post Office Box 1715
Columbia, South Carolina 29202-1715

Michelle A. Stone

SWORN to and subscribed before me
this 27th day of August, 2015

Julie A. Long

Julie A. Long

Notary Public for South Carolina

My Commission expires: 05/01/2019

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
WCC FILE NO: 1319471

COPY

Daniel Davis, Jr.,)
)
Employee/Claimant,)
)
vs.)
)
ABC Amusements, Inc.) SC WORKERS' COMPENSATION
) UNINSURED EMPLOYERS' FUND
Employer/Defendant,) REPLY TO EMPLOYEE/CLAIMANT'S
) MOTION
and)
)
SC Workers' Compensation Uninsured)
Employers' Fund,)
)
Carrier/Defendants.)
_____)

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION,
GEORGE MIARS, ESQUIRE, ATTORNEY FOR EMPLOYER/DEFENDANT,
ABC AMUSEMENTS, INC., EMPLOYER/DEFENDANT AND
JOHN R. MOORMAN, ESQUIRE AND JOSEPH T. MCELVEEN, JR., ESQUIRE,
ATTORNEYS FOR THE EMPLOYEE/CLAIMANT:

The South Carolina Workers' Compensation Uninsured Employers' Fund, by and through its undersigned attorney, hereby replies to the Claimant's Motion as follows:

STATEMENT OF FACTS

On May 12, 2015 Commissioner Beck issued an Order and Decision in this matter which was served upon the parties by electronic on the same date.

The Claimant filed and served a Form 30 – Request for Hearing by mailing it by Certified Mail to the South Carolina Workers' Compensation Commission and the parties on May 27, 2015.

The Judicial Department refused to accept the Form 30 for filing stating “we are in receipt of your letter in regard to the appeal dismissal for the above-referenced matter. Please note that when an

Order is sent electronically, there is no five (5) day rule for mailing as the Order is served immediately. Parties have fourteen (14) days to serve an appeal/Form 30 on the Commission and opposing party.” (See attached Exhibit “A” - Email from Kim Falls, South Carolina Workers’ Compensation Commission.)

The Claimant’s attorney filed a Motion to which the undersigned Replied. An Order was issued by the Commission on August 17, 2015 dismissing the Motion. Claimant’s attorney has filed yet another Motion seeking the same relief as the first Motion.

ARGUMENT

I. The undersigned reiterates and incorporates herein the Reply filed to Claimant’s First Motion whereby the identical claim for relief was made (See attached Exhibit “B” – SC Workers’ Compensation Uninsured Employers’ Fund Reply to Employee/Claimant’s Motion filed on June 26, 2015).

It is further argued and alleged that the filing of another Motion alleging the same circumstances and requesting the identical relief is improper and is barred by legal theories of res judicata.

Furthermore, there is nothing in the South Carolina Code that allows for a “Reconsideration” of an Order issued by the Commission. It would appear that the proper procedure would be the filing of an Appeal to the Court of Appeals and not a new motion seeking the same relief or a reconsideration of the same.


II. The Claimant's attorney has failed to properly serve the Motion upon the Employer/Defendant who is unrepresented at this time.

WHEREFORE, This Commission has already ruled upon an earlier Motion alleging the same facts and seeking the same relief previously sought, and because there is no statutory authority for the Commission to "reconsider" an Order, the undersigned would respectfully request that this Motion, too, be dismissed.

Respectfully submitted,

COFIELD LAW FIRM

By:



Amy V. Cofield
809 South Lake Drive
Lexington, South Carolina 29072
Telephone: 803-951-0389
Facsimile: 803-951-0398
Email: amy@cofieldlaw.com
*Attorney for SC Workers' Compensation
Uninsured Employer Fund, Carrier/Defendant*

Lexington, South Carolina
September 2, 2015

Amy Cofield

From: Falls, Kim [kfalls@wcc.sc.gov]
Sent: Wednesday, June 10, 2015 12:36 PM
To: jmcelveen@bryanlaw.com
Cc: jmoorman@bryanlaw.com; amy@cofieldlaw.com; Lisa Glover
Subject: Daniel Davis v. ABC Amusements, Inc. (1319471)

Mr. McElveen,

We are in receipt of your letter in regards to the Appeal dismissal for the above-referenced matter. Please note that when an Order is sent electronically, there is no 5 day rule for mailing as the Order is served immediately. Parties have 14 days to serve an Appeal/Form 30 on the Commission and opposing parties.

Commissioner Beck's Order was served on May 12, 2015. The Appeal/Form 30 would have needed to be served no later than May 26th, 2015. The Certificate of Service attached to the Appeal/Form 30 was dated May 27th, 2015, and the Certified Mail date from USPS was May 28th, 2015. Therefore, the Appeal/Form 30 is untimely.

That being said, we cannot take action on your letter. If you still do not agree with our actions, you will need to file a Motion.

Thanks,

Kim Falls
SC Workers' Compensation Commission
Judicial Analyst – Appeals Division
1333 Main Street, Suite 500
Post Office Box 1715
Columbia, SC 29202-1715
Phone: 803-737-5739
kfalls@wcc.sc.gov

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SCUEF
EXHIBIT "A"

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
WCC FILE NO: 1319471

Daniel Davis, Jr.,)	
)	
Employee/Claimant,)	
)	
vs.)	
)	SC WORKERS' COMPENSATION
ABC Amusements, Inc.)	UNINSURED EMPLOYERS' FUND
)	REPLY TO EMPLOYEE/CLAIMANT'S
Employer/Defendant,)	MOTION
and)	
)	
SC Workers' Compensation Uninsured)	
Employers' Fund,)	
)	
Carrier/Defendants.)	
)	

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION, GEORGE MIARS, ESQUIRE, ATTORNEY FOR EMPLOYER/DEFENDANT, ABC AMUSEMENTS, INC., EMPLOYER/DEFENDANT AND JOHN R. MOORMAN, ESQUIRE AND JOSEPH T. MCELVEEN, JR., ESQUIRE, ATTORNEYS FOR THE EMPLOYEE/CLAIMANT:

The South Carolina Workers' Compensation Uninsured Employers' Fund, by and through its undersigned attorney, hereby replies to the Claimant's Motion as follows:

STATEMENT OF FACTS

On May 12, 2015 Commissioner Beck issued an Order and Decision in this matter which was served upon the parties by electronic on the same date.

SCWCC
JUN 26-2015
JUDICIAL

SCUEF EXHIBIT "B"

The Claimant filed and served a Form 30 – Request for Hearing by mailing it by Certified Mail to the South Carolina Workers' Compensation Commission and the parties on May 27, 2015.

The Judicial Department refused to accept the Form 30 for filing stating “we are in receipt of your letter in regard to the appeal dismissal for the above-referenced matter. Please note that when an Order is sent electronically, there is no five (5) day rule for mailing as the Order is served immediately. Parties have fourteen (14) days to serve an appeal/Form 30 on the Commission and opposing party.” (See attached Exhibit “A” - Email from Kim Falls, South Carolina Workers' Compensation Commission.)

ARGUMENT

The Claimant herein contends that the Form 30 was timely filed by relying on a prior Order issued by Single Commissioner in December, 2012. That Order states that the “Commission, as a matter of policy has applied the five (5) day rule for electronic service specified in Regulation 57-213(A)(2) for purposes of determining timeliness of appeals.” There has been no indication that this Order was ever appealed or not and certainly no evidence that this issue has been decided by a higher court other than the Workers' Compensation Commission.

An Order of a Single Commissioner does not establish a “law”. And even if it had been the policy of the Workers' Compensation Commission to expand a five (5) day grace period to electronic service as it did for the mailing of service by regular mail that policy obviously no longer exists at the Workers' Compensation Commission pursuant to Kim Falls, a Judicial Analyst in the Appeals Division at the South Carolina Workers' Compensation Commission.

The Claimant has alleged that Regulation 67-213(A) addresses services of Orders and "is silent as to when the service is complete as it relates to electronic service." This is false. There are also other regulations and court rules that clearly establish that South Carolina follows what is commonly known as the "mailbox rule," that is, service is deemed complete upon mailing. (Regulation 67-213(B))

When you read the entire Regulation each method of service is addressed. Regulation 67-213 (A)(2) states "When service is made by Certified Mail the date of service is the date of the addressees receipt indicated by the certified mail return receipt." However the next sentence states clearly "When service is made by First Class Mail, five (5) days are added to the date of mailing." Regulation 67-213(B) states that the "Commission serves Hearing Notices and Form 31, Review Hearing Notices, electronically or by deposit in the United States Postal Service First Class postage addressed to the party. Service is deemed complete upon mailing." If one chooses to use the United States Postal Service then the Commission has granted a five (5) day extension on its service calculation. However, it is not granted anywhere in the Statute any five (5) day extension for service of orders electronically.

One may also want to review Regulation 67-211 Service of Forms and Documents. This regulation grants the Commission in section 67-211(C) the authority "to serve other forms and documents electronically or by depositing the form or document in the United States Postal Service First Class postage addressed to the party pursuant to Regulation 67-210. Service is deemed complete upon mailing unless the document is returned."

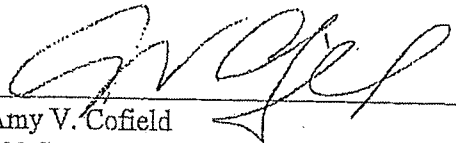
Finally, if these statutes are not explicit enough to designate that the Workers' Compensation Commission may serve orders electronically and that they are deemed served upon mailing then one could refer to the South Carolina Rules of Civil Procedure. South Carolina Rules of Civil Procedure Rule 6(B) states specifically "The time for filing notice of intent to appeal is jurisdictional and may not be extended by consent or Order." Again there is no statute, case law or other direction that ever declares that a five (5) extension is granted for electronic service by email.

Claimant's argument that it is reasonable to grant a five (5) day extension for electronic service because, "most law offices will check their e-mail within five days" is ridiculous. The five (5) day rule was extended for potential problems with the United States Postal Service NOT because law firms didn't read their mail.

Wherefore, it is Defendants position that the jurisdictional question as to the date of service of the Order is clearly the date of mailing (sending) and there is no indication of any statute or case that applies a five (5) day extension to anything other than regular US mail. Therefore, the Form 30 was not filed timely.

COFIELD LAW FIRM

By:



Amy V. Cofield

809 South Lake Drive

Lexington, South Carolina 29072

Telephone: 803-951-0389

Facsimile: 803-951-0398

Email: amy@cofieldlaw.com

Attorney for SC Workers' Compensation

Uninsured Employer Fund, Carrier/Defendant

Lexington, South Carolina
June 24, 2015

Amy Cofield

From: Falls, Kim [kfalls@wcc.sc.gov]
Sent: Wednesday, June 10, 2015 12:36 PM
To: jmcelveen@bryanlaw.com
Cc: jmoorman@bryanlaw.com; amy@cofieldlaw.com; Lisa Glover
Subject: Daniel Davis v. ABC Amusements, Inc. (1319471)

Mr. McElveen,

We are in receipt of your letter in regards to the Appeal dismissal for the above-referenced matter. Please note that when an Order is sent electronically, there is no 5 day rule for mailing as the Order is served immediately. Parties have 14 days to serve an Appeal/Form 30 on the Commission and opposing parties.

Commissioner Beck's Order was served on May 12, 2015. The Appeal/Form 30 would have needed to be served no later than May 26th, 2015. The Certificate of Service attached to the Appeal/Form 30 was dated May 27th, 2015, and the Certified Mail date from USPS was May 28th, 2015. Therefore, the Appeal/Form 30 is untimely.

That being said, we cannot take action on your letter. If you still do not agree with our actions, you will need to file a Motion.

Thanks,

Kim Falls
SC Workers' Compensation Commission
Judicial Analyst – Appeals Division
1333 Main Street, Suite 500
Post Office Box 1715
Columbia, SC 29202-1715
Phone: 803-737-5739
kfalls@wcc.sc.gov

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EXHIBIT "A"

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
WCC FILE NO: 1319471

COPY

Daniel Davis, Jr.,)
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Employee/Claimant,)
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vs.)
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ABC Amusements, Inc.)
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Employer/Defendant,)
and)
)
SC Workers' Compensation Uninsured)
Employers' Fund,)
)
Carrier/Defendants.)
_____)

CERTIFICATE OF SERVICE

I, Ami M. Meetze, an employee of Cofield Law Firm, do hereby state that I have on this 2nd day of September, 2015, served a copy of the within and foregoing **SC WORKERS' COMPENSATION UNINSURED EMPLOYERS' FUND REPLY TO EMPLOYEE/CLAIMANT'S MOTION**, upon all interested parties, by depositing same in United States mail with postage pre-paid and addressed as follows:

S. C. Workers' Compensation Commission
Ms. Amy Bracy, Judicial Director
Post Office Box 1715
Columbia, South Carolina 29202-1715

George Miars, Esquire
Willson Jones Carter & Baxley
421 Wando Park Boulevard, Suite 100
Mount Pleasant, South Carolina 29464

ABC Amusements, Inc.
Attn: Scott Wiener, Registered Agent
286 Rocky Creek Road
Greenville, South Carolina 29615

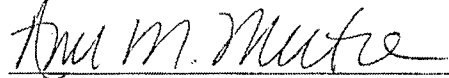
*Certificate of Service –
SC Workers' Compensation Uninsured
Employers' Fund Reply to Claimant's Motion
WC No.: 1319471*

John R. Moorman, Esquire
Joseph T. McElveen, Jr., Esquire
Bryan Law Firm of SC, L.L.P.
Post Office Box 2038
Sumter, South Carolina 29151-2038

VIA EMAIL – lglover@saf.sc.gov

Lisa C. Glover, Esquire
SC Uninsured Employers' Fund
Post Office Box 210039
Columbia, South Carolina 29221-0039

COFIELD LAW FIRM



Ami M. Meetze, Paralegal
809 South Lake Drive
Lexington, South Carolina 29072
Phone: 803-951-0389
Facsimile: 803-951-0398
Email: ami@cofieldlaw.com

Lexington, South Carolina
September 2, 2015

*Certificate of Service –
Workers' Compensation Uninsured
Employers' Fund Reply to Claimant's Motion
19471*

Elizabeth Nesbitt

To: Joseph T McElveen <jmcelveen@bryanlaw.com>
Subject: RE: Electronic Filing

From: Cannon, Gary [<mailto:gcannon@wcc.sc.gov>]
Sent: Friday, February 15, 2013 5:14 PM
To: Joseph T McElveen
Subject: RE: Electronic Filing

Joe,

The Commissioners discussed this issue and determined it would take a change in the regulations. They decided not to pursue a change in the regulations. Similar issues would be resolved on a case by case basis.

Attached is the Order issued by Commissioner Beck which deals with the issue of electronic notice.

Please contact me if I can be of further assistance.

Have a great weekend.

Gary M. Cannon
Executive Director

From: Joseph T McElveen [<mailto:jmcelveen@bryanlaw.com>]
Sent: Thursday, February 14, 2013 10:42 AM
To: Cannon, Gary
Subject: RE: Electronic Filing

Thanks, Gary.

From: Cannon, Gary [<mailto:gcannon@wcc.sc.gov>]
Sent: Thursday, February 14, 2013 8:27 AM
To: Joseph T McElveen
Subject: RE: Electronic Filing

Joe,

I am aware of only one case where this was an issue. The case was before Chairman Beck. I will find out the status/disposition of the case and get back to you.

Gary

From: Joseph T McElveen [<mailto:jmcelveen@bryanlaw.com>]
Sent: Wednesday, February 13, 2013 7:57 PM

To: Cannon, Gary
Subject: Electronic Filing

Gary,

Has the WCC dismissed any requests for review when the request was filed later than fourteen days after the order was electronically mailed to the attorney, but within the five day "grace period" that is applicable when service is by mail?

Joe

Joseph T. McElveen, Jr.
BRYAN LAW FIRM OF SC, L.L.P.
17 East Calhoun Street
Sumter, SC 29150
(803) 775-1263 telephone
(803) 778-1300 facsimile

Elizabeth Nesbitt

From: Joseph McElveen
Sent: Friday, July 24, 2015 3:31 PM
To: gcannon@wcc.sc.gov
Subject: Electronic Service

JournalPM: J
JournalPMSeqNo: 126956
StiPmID: f3fe20ac-323a-11e5-b880-8c89a56ce490

Gary,

Below is an Administrative Order of the Supreme Court. It was the only court rule or administrative order I could find on electronic service. I called the Supreme Court and talked to the clerk's office and Court Administration. According to them and my research, there is nothing else, although they say "e filing" is just around the corner. Note that the administrative order says electronic service will be handled just like first class mail.

Joe McElveen



South Carolina
JUDICIAL DEPARTMENT

2004-11-15-01

The Supreme Court of South Carolina

RE: Service of Documents by Electronic Mail

ADMINISTRATIVE ORDER

The law firm of Nelson, Mullins, Riley and Scarborough seeks permission to experiment with the use of electronic mail (e-mail) for the service of legal documents. Because this

experiment would provide valuable information regarding the feasibility of service by e-mail and use of the United States Postal Service Electronic Postmark, I grant permission to Nelson, Mullins, Riley and Scarborough, as well as other attorneys, to serve and receive documents through e-mail subject to the following conditions.

Attorneys must first agree in writing to serve and receive documents through e-mail. In such instances, service pursuant to Rule 5(b)(1), SCRCP, upon a party represented by an attorney may be effected by e-mail provided that the service has been postmarked by the United States Postal Service Electronic Postmark, as defined in S.C. Code Ann. § 26-6-20(18)(enacted July 16, 2004), and sent to the attorney's e-mail address as provided by the attorney for the purpose of receiving service of legal documents and other correspondence. When service is made via e-mail, the sender must include a description of the contents of the document(s), as well as the caption and civil action number of the case. **Such service, postmarked by the United States Postal Service Electronic Postmark, shall have the same effect as service via the United States mail.** Service via e-mail shall be in conformity with the requirements contained in the South Carolina Uniform Electronic Transactions Act, S.C. Code Ann. §§ 26-6-10, et seq.

Based on the success of this limited experiment with e-mail service of documents under Rule 5(b)(1), SCRCP, the experiment may be extended at a later date to service of summons and complaints. Nelson, Mullins, Riley and Scarborough, and any other attorneys who participate in this experiment, are directed to provide the Court with feedback regarding their experience with the use of e-mail for service by February 28, 2005.

s/Jean Hofer Toal
Chief Justice Jean Hofer Toal

Columbia, South Carolina
November 15, 2004

Elizabeth Nesbitt

From: Elizabeth Nesbitt
Sent: Tuesday, September 29, 2015 10:48 AM
To: 'Bracy, Amy'
Cc: John Moorman; Joseph McElveen; amy@cofieldlaw.com; Lisa Glover; Susan Strausbaugh; Joyce Deatrick; Ami Meetze
Subject: Daniel Davis v. ABC Amusements WCC: 1319471

Good afternoon Ms. Bracy,

Please see the email below from Attorney McElveen.

If you have any questions, please do not hesitate to contact our office.

Elizabeth W. Nesbitt

Elizabeth W. Nesbitt
Workers' Compensation paralegal
to *Joseph T. McElveen, Jr., Esquire and
John R. Moorman, Esquire*
BRYAN LAW FIRM OF SC, L.L.P.
17 East Calhoun Street
P.O. Box 2038
Sumter, SC 29151-2038
803-775-1263 (telephone) ext 239
803-778-1300 (fax)
enesbitt@bryanlaw.com
jmcelveen@bryanlaw.com
jmoorman@bryanlaw.com
www.bryanlaw.com

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From: Joseph McElveen
Sent: Monday, September 28, 2015 11:48 AM
To: Elizabeth Nesbitt <enesbitt@bryanlaw.com>
Cc: John Moorman <jmoorman@bryanlaw.com>
Subject: DAVIS

I had to file an appeal to the South Carolina Court of Appeals in the above-captioned case. You should have received a copy of the notice.

Prior to the time when I had to file the appeal, I filed a motion asking the Commission to reconsider its order in this matter. I am herein confirming what I am sure you already know. Jurisdiction of this matter is now in the Court of Appeals such that the Commission cannot issue an order.

I apologize for any inconvenience. I had hoped to avoid an appeal to the courts through my motion for reconsideration.

Joe Mc

IN THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA WORKERS' COMPENSATION

COMMISSION APPELLATE PANEL

WCC File No. 1319471

Case No. 2015-001918

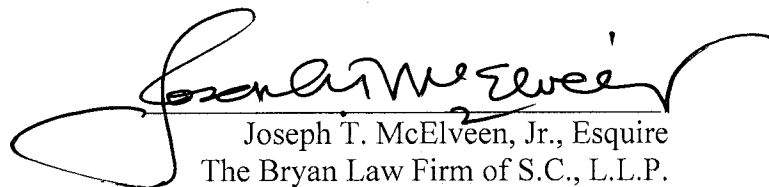
Daniel Davis, Employee, Appellant,

v.

ABC Amusements, Inc., Employer and SC Uninsured Employers Fund, Carrier, Respondents.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Record on Appeal complies with Rule 211(b),
SCACR.



Joseph T. McElveen, Jr., Esquire
The Bryan Law Firm of S.C., L.L.P.
Bar #: 3803

17 E. Calhoun Street
P.O. Box 2038
Sumter, SC 29151-2038
(803) 775-1263
Attorney for the Appellant

December 29, 2015

RECEIVED
DEC 31 2015
SC Court of Appeals