

THE STATE OF CAROLINA  
IN THE COURT OF APPEALS  
APPEAL FROM SOUTH CAROLINA WORKERS' COMPENSATION  
APPELLATE PANEL  
WCC FILE NO: 1107022

Sandy Chamblee

Appellant

v.

Anderson County Fire Dept.  
And State Accident Fund, Carrier

Respondents

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MAR 01 2016

**SC Court of Appeals**

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INITIAL REPLY BRIEF OF APPELLANT

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TABLE OF CONTENTS

Table of Authorities.....ii  
Statement of Issues on Appeal .....1  
Statement of the Case .....2  
Arguments

- 1. THE COMMISSION ERRED IN ALLOWING AND CONSIDERING TESTIMONAY ON THE ISSUE OF THE TIME WHEN THE EMPLOYER WAS NOTIFIED OF CLAIMANT’S ALLEGED INJURY BECAUSE THE EMPLOYER’S FIRST REPORT OF INJURY FORM 12-A INDICATES THAT THE EMPLOYER WAS NOTIFIED ON May 26, 2011.**

Conclusions.....5

TABLE OF AUTHORITIES

CASES

Sligh v Newberry Electric Cooperative, 58 S.E. 2d 675.....

STATUTES

OTHER AUTHORITIES

**STATEMENT OF ISSUES ON APPEAL**

- 1. DID THE COMMISSION ERR AND HOLD THAT THE CLAIMANT FAILED TO MEET HER BURDEN OF PROOF TO ESTABLISH A COMPENSABLE INJURY BY ACCIDENT ARISING OUT OF AND IN THE COURSE AND SCOPE OF HER EMPLOYMENT OCCURRING ON MAY 26, 2011, SINCE THE EVIDENCE OF RECORD CLEARLY ESTABLISHED THAT THE CLAIMANT'S LUNG INJURY WAS CAUSED BY EXPOSURE OF SMOKE ON THAT DATE?**

**(NOT ARGUED IN THE REPLY BRIEF)**

- 2. DID THE COMMISSION ERR AND HOLD THAT THE CLAIMANT FAILED TO MEET HER BURDEN OF PROOF THAT SHE SUSTAINED AN AGGRAVATION OF HER PRE-EXISTING ASTHMA CONDITION ARISING OUT AND IN THE COURSE AND SCOPE OF HER EMPLOYMENT DUE TO HER EXPOSURE TO SMOKE ON MAY 16, 2011 SINCE THE CLAIMANT'S TESTIMONY ALONE IS SUFFICIENT ALONE TO CARRY THE BURDEN OF PROOF IN A WORKER'S COMPENSATION CASE IN SOUTH CAROLINA?**

**(NOT ARGUED IN THE REPLY BRIEF)**

- 3. DID THE COMMISSION ERR IN ALLOWING AND CONSIDERING TESTIMONY ON THE ISSUE OF THE TIME WHEN THE EMPLOYER WAS NOTIFIED OF CLAIMANT'S ALLEGED INJURY BECAUSE THE EMPLOYEE'S FIRST REPORT OF INJURY FORM 12-A INDICATES THAT THE EMPLOYER WAS NOTIFIED ON MAY 26, 2011?**

**(ARGUED IN THE REPLY BRIEF)**

## STATEMENT OF THE CASE

The Claimant timely filed a Form 50 with the South Carolina Workers' Compensation Commission on July 25, 2013 alleging an injury at work on May 25, 2011 caused by the inhalation of smoke. The claimant was denied by the Employer's filing of a Form 51 on December 20, 2013. An amended Form 50 and an amended Form 51 were later filed.

The case was heard by a single hearing commissioner on November 6, 2014 in Anderson, South Carolina. A decision adhered to the claimant was filed on March 2, 2015.

The claimant filed a request for review by an appellant panel of the South Carolina Workers' Compensation Commission which heard the matter and issued a decision adhere to claimant to the claimant on August 5, 2015. The decision was the Final decision of the South Carolina Workers' Compensation Commission.

A timely filed Notice of Appeal was filed with the South Carolina Court of Appeals on or about September 1, 2015.

III. THE COMMISSION ERRED IN ALLOWING AND CONSIDERING TESTIMONY ON THE ISSUE OF THE TIME WHEN THE EMPLOYEER WAS NOTIFIED OF CLAIMANT'S ALLEGED INJURY AND BECAUSE THE EMPLOYER'S FIRST REPORT OF INJURY FORM 12-A INDICATES THAT THE EMPLOYER WAS NOTIFIED ON MAY 26, 2011.

In Appellant's Initial Brief, she argues that the Commission erred in allowing testimony on the issue of the date the employer became aware of the smoke inhalation incident.

In Respondent's Brief, this issue is addressed under Issue II which is phrased as follows:

II. THE COMMISSION PROPERLY ALLOWED TESTIMONY RELATED TO THE ISSUE OF WHEN THE EMPLOYER WAS NOTIFIED OF APPELLANT'S ALLEGED INJURY. EVEN ASSUMING, ARGUENDO, THAT APPELLANT NOTIFIED THE EMPLOYER OF HER ALLEGATIONS ON MAY 26, 2011, THERE IS STILL SUBSTANTIAL EVIDENCE TO SUPPORT THE COMMISSION'S ORDER.

These two questions raise the issue to which the Reply Brief is addressed.

Appellant in her Initial Brief argues that the contents of the required form 12-A constitute a binding admission by the employer on the date of notification. Appellant relies on Sligh v. Newberry Electric Co-op 58 SE 2d, 675, 216 S.C. 401 (1950).

Respondent in their Initial Brief argue that 1) This issue was not preserved for appeal and 2) any such issue does not constitute error. Respondent then attempts to distinguish **Sligh** from the facts at hand.

South Carolina courts have held the contents of a First Report of Injury to be an admission by the employer. In Sligh v. Newberry Electric Cooperative, supra, in discussing the importance of a First Report of Injury, the Court held that **this requirement of the law is not a perfunctory matter of form, but was intended to give correct, and reliable information as to an injury**

**suffered by an employee...** he made certain statements with regard to the alleged accident without qualification; and we think it is clear that these statements, made by a responsible official agent, constitute admissions or declarations against interest. See 58 S.C. 2d 682.

In Respondent's Brief, an attempt is made to shift the burden of the accuracy of the Form 12-A to the employer from the employee. In other words, Respondent argues that "we used this date because she (Sandy Chamblee) told us to." This argument should fall for either of several reasons.

First, the authorities cited by the Appellant in her brief clearly show that the responsibility for the contents of the Form 12-A lies with the employer. As is stated in *Sligh*, it is a form designed to give correct and reliable information. To allow an employer to deviate from the contents of a Form 12-A invites a war of words (he said-she said) between employer and employee as to the date of notice. As was argued by the authorities in Appellant's Brief, the contents of the 12-A do constitute an admission by the employer.

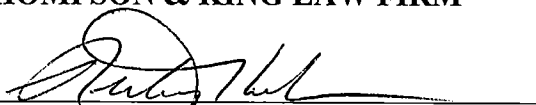
Second, the argument advanced by the Respondent purports to allow a shifting of the duty to supply a correct date of injury from the employer to the employee. Appellant submits that no statute or case law to support such a burden shifting exists in South Carolina.

Third, if the employer is going to delegate the duty to supply correct information on the 12-A to its insurance company and the employee, then the employer should be bound by the truthfulness and accuracy given by the employee.

**Conclusion**

Based on the arguments of the Appellant's Initial Brief and on the contents of this Reply Brief, the Appellant respectfully requests that this case be reversed and remanded to the South Carolina Worker's Compensation Commission for the payment of benefits to the Appellant.

**THOMPSON & KING LAW FIRM**



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Dated:

2-26-16

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PROOF OF SERVICE

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I hereby certify that I have served the Initial Reply Brief of Appellant to the South Carolina Court of Appeals, P.O. Box 11629, Columbia, SC 29611 and Ian C. Gohean, 872 S. Pleasantburg Drive, Greenville, SC 29607, by depositing a copy of it in the United States Mail, postage prepaid, on February 26, 2016 .



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February 26, 2016

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**SC Court of Appeals**

The Honorable Jenny A. Kitchings  
Clerk of the S.C. Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211

RE: Sandy Chamblee vs Anderson County  
Fire Department & State Accident Fund  
Case No: WCC File: 1107022

Dear Madam:

Please find enclosed the Initial Reply Brief of the Appellant in regard to the above case, along with the Proof of Service on the Ian C. Gohean.

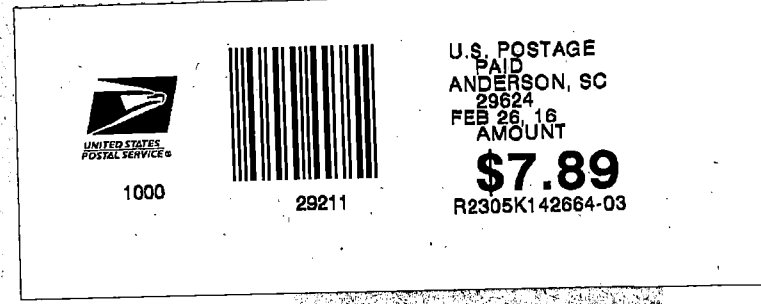
Thank you for your help in this matter and should you have any questions, please advise.

Very truly yours,



Richard E. Thompson, Jr.

RET:ddp  
enclosure  
cc: Ian Gohean



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