

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Appellate Case No. 2014-001788

Clarence Winfrey, Employee, Claimant, Respondent,

v.

Archway Services, Inc., Employer,
and American Fire & Casualty Insurance
Company c/o Liberty Mutual Group, Carrier, Appellants.

RESPONDENT'S MOTION FOR REHEARING
ON THE MOTION TO COMPEL MEDICAL CARE
PURSUANT TO THE AWARD OF THE
SC WORKERS' COMPENSATION
COMMISSION UNDER SC CODE §42-17-60

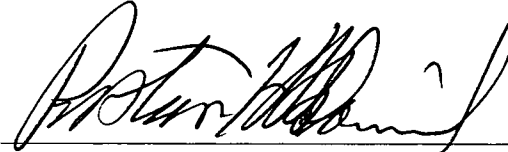
RECEIVED
MAR 14 2016
SC Court of Appeals

TO: MR. BRETT BAYNE, ESQUIRE, COUNSEL FOR THE APPELLANTS:

YOU WILL PLEASE TAKE NOTICE that the Respondent, as
Movant before the Court, hereby petitions the Court for
Rehearing pursuant to SCACR, Rule 240(j) as to the Order of
the Honorable James E. Lockemy issued March 7, 2016 on the
Motion to Compel Appellants to pay for medical care
pursuant to the Award of the Workers' Compensation

Commission. Said Motion is based upon the Memorandum attached hereto and incorporated herein by reference.

Respectfully submitted,

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

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

Attorney for Respondent/Movant

March 10, 2016

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MEMORANDUM IN SUPPORT OF
RESPONDENT'S MOTION FOR REHEARING
ON THE MOTION TO COMPEL MEDICAL CARE
PURSUANT TO THE AWARD OF THE
SC WORKERS' COMPENSATION
COMMISSION UNDER SC CODE §42-17-60

The Movant would respectfully show unto the Court as follows:

1. That up until July 1, 2007, appeals from the Awards of the SC Workers' Compensation Commission were to the Circuit Court, and then to the SC Court of Appeals and SC Supreme Court. The Circuit Court had jurisdiction over the Award after appeal and there is a plethora of cases

wherein the Circuit Court awarded compensation benefits to the injured worker under the Award of the Commission. See for an excellent discussion: Case v. Hermitage Cotton Mills, 236 S.C. 515, 115 S.E.2d 57 (1960).

2. That as a result of the 2007 amendments to SC Code §42-17-60, appeals are now directly to this Court and thus after the Amendments, jurisdiction and authority after such appeal over the Award of the Commission lies with this Court. The Amendment also added that the appeal does not constitute a supersedes as to the provision of medical care. It placed jurisdiction in and requires this Court to enforce the provision of medical care for the medical treatment as awarded by the Commission. Presumably if there is an appeal to the Supreme Court, as in all cases, once jurisdiction vests in that Court, the SC Supreme Court would have jurisdiction over the issue. The Movant veribly believes that the Court overlooked this additional and exclusive jurisdiction over medical care under the Commission Award in rendering its decision and relied upon the normal and usual jurisdiction granted in an appeal situation to the Court under SCACR, Rule 205. Again, pursuant to the statute, this Court has exclusive jurisdiction after appeal to enforce the Award of the Commission.

3. That in addition thereto, in the Court's Order the Court refers to the medical treatment as, "ordered by the Appellate Panel" and then states that the, "Appellate Panel" retains jurisdiction to act on any such Motion. The Court misapprehended the role of the Appellate Panel and that the Award is not an Award of the Appellate Panel, but is the Award of the Commission. SC Code §42-3-20(C) was amended to allow the Chairman with the approval of a majority of the other Commissioners to allow Full Commission Reviews to be conducted by three-member panels. The statute specifically provides that the, "decisions of three-member panels have the same force and effect as Full Commission reviews." Thus the Award is the Commission Award not the Panel Award.

Under current practice, the three-member panels of the Commission meet only once per month and the membership of those panels rotates so that no panel is the same month to month. Thus, in addition to the fact that this Court has exclusive jurisdiction, if this matter was referred to the Appellate Panel that heard the Appeal (Review), would require that that specific Panel that heard the request for review for the Full Commission to be specifically reconfigured. This would result in a huge delay for at least a month or more in addition to the time required to

file an additional Motion to have this matter heard. Therefore, not only does this Court have exclusive jurisdiction but by referring it to the Panel of the Full Commission that heard the original Request for Review would greatly delay any decision and quite frankly would create a process for which the Commission is not set up in reference to its review process in reference to Requests for Review heard by the Full Commission.

4. That in addition to the above, the Court misapprehended the basis for the provision of medical care in this situation. The Claimant in his Motion is requesting enforcement of the Award (Judgment) of medical care that has already been made by the Commission. The Order of the Court as written would reverse the entire body of law in reference to the enforcement of Awards of the Commission and in fact all judgments by any Court that has existed since the inception of the Act and as has been applied by this Court and the Supreme Court.

The Court in rendering its Order appears to look at this as a contested medical issue instead of the requirement that the Defendants pay medical care pursuant to the "Award" (Judgment) of the Commission. The Court states,

"However, we believe the question of whether the medical treatment sought by the Respondent constitutes 'medical treatment for his heart condition' set forth in the Appellate Panel's Order is a question more appropriate for the Appellate Panel" (Emphasis added).

The Court misapprehended that the Claimant by filing the Motion is seeking to enforce the Award of the Commission. The Defendants are required to pay pursuant to the Award of the Commission. This is not a situation where the Defendants have accepted an accident and there is a question of whether or not something is causally related; that decision has already been made and benefits have been awarded by the Commission under its Award. This again is an Award and the Defendants are required by law to simply pay for the medical care under the Award. As is set forth in the Motion, the authorized treating physicians under the Award, and specifically Dr. Lide in this instance, referred the Claimant for treatment for his heart-related problems to the Medical University of South Carolina for consideration of a heart transplant and/or other treatment as the doctors at MUSC deemed necessary. Regardless of the fact that treatment was authorized which is totally irrelevant there is nothing to the contrary in the Record that this care is anything other than medical care ordered pursuant to the Award of the Commission by the designated

treating physician. While again irrelevant, the Defendants accepted and authorized medical care at MUSC. In Risinger v. Knight Textiles, 353 S.C. 69, 577 S.E.2d 222 (SC App. 2002), reh. den. and cert. den., then Chief Judge Hearn writing for the Court held that the Defendants, after a final Award of the Commission, do not have a right under §42-15-80 to seek an independent medical evaluation.

However, and more importantly to the issue currently before the Court, the Court wrote:

"Under Knight's interpretation of the statute, employer/carrier would be able to continue to seek a new doctor's opinion each time it did not like the opinion of the claimant's doctor. This would allow the employer/carrier to "shop around" indefinitely until it found a favorable opinion, often sacrificing much needed treatment. We do not believe this result was intended by the Legislature."

The Court then went on to state:

"Furthermore, the language of SC Code Ann. §42-15-60 does not allow an employer to dictate the medical treatment of injured employees. Our reading of the statute reveals that it requires only that the employer/carrier pay for treatment during the life of the injured employee." (Emphasis added).

After the Award the time and right to challenge compensability up front is over. Under SC Code §42-15-95, after the Award as part of claims administration the insurance carrier has the right to ask, with simultaneous

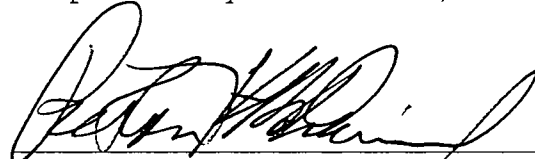
notice to the claimant, the authorized treating physician, in this case Dr. Lide, as to whether or not the medical care is causally related. The Court will not find that that was done in this case and the Court will find nothing in the Motion or in the Record wherein any doctor has made the statement that this medical care for the Claimant's heart is not causally related medical care for treatment of the heart problems caused and/or causally related to the original injury as Awarded by the Commission.

5. That the Claimant/Movant would again reiterate time is of the essence because Mr. Winfrey's condition is extremely delicate and the Court will note from the records that the surgeon at MUSC wanted to perform the surgery within seven (7) days and it has now been held up over two (2) months. Most respectfully, if the Court does not rule immediately on this Motion, this could result in an absolutely devastating situation for this injured worker, up to and including his death. Most respectfully the Court's Order as written would also eviscerate Awards of the Workers' Compensation Commission rendering them meaningless and would result in a claimant who has been awarded medical care to have to go out and get written opinions and medical evidence before the Claimant could get needed medical care every time the carrier chose to deny

something on a whim and not based on a substantive decision.

Wherefore, the Claimant/Movant would respectfully request rehearing on this issue and would respectfully request a hearing on the Motion for Rehearing. The decision is critically important to this injured worker and all injured workers who have been awarded (a Judgment) benefits. The Claimant would also respectfully request that the Court upon rehearing and reconsideration issue an Order directing the Defendants to immediately provide the medical care pursuant to the Award of the Commission.

Respectfully submitted,



Preston F. McDaniel, Esquire
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1315 Elmwood Avenue
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(803) 771-7211
Attorney for Respondent/Movant

March 10, 2016

The South Carolina Court of Appeals

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ORDER

Respondent has filed a motion to compel Appellants to authorize medical care recommended by Respondent's physicians, including a dental examination and heart surgery. Respondent argues the medical care has been awarded by the Appellate Panel and Appellants are required by that award and section 42-17-60 of the South Carolina Code (2015) to pay for the medical care.

Initially, we agree with Respondent that pursuant to section 42-17-60, an award of compensation and medical treatment is not stayed by an appeal to this court and an employer is required to provide the medical treatment ordered by the Appellate Panel pending the resolution of the appeal. However, we believe the question of whether the medical treatment sought by Respondent constitutes "medical treatment for his heart condition" as set forth in the Appellate Panel's order is a question more appropriate for the Appellate Panel, and the Appellate Panel retains jurisdiction to act on any such motion. Accordingly, we decline to act on the motion at this time.


FOR THE COURT

Columbia, South Carolina

FILED
3/7/16

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PROOF OF SERVICE

I certify that I have served the RESPONDENT'S MOTION FOR REHEARING ON THE MOTION TO COMPEL MEDICAL CARE PURSUANT TO THE AWARD OF THE SC WORKERS' COMPENSATION COMMISSION UNDER SC CODE §42-17-60 with MEMORANDUM IN SUPPORT by depositing a copy of it in the United States Mail, postage prepaid, on March 10, 2016 addressed to:

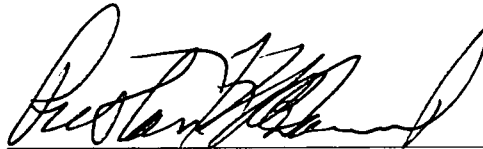
Brett H. Bayne, Esquire
McAngus, Goudelock & Courie
Post Office Box 12519
Columbia, SC 29211.

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Dated: March 10, 2016



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Attorney for Respondent/Movant

78952

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

Proudly representing injured workers
for over 30 years.

Preston F. McDaniel

Telephone (803) 771-7211

Matthew Robertson

Facsimile (803) 252-0709

March 10, 2016

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

**RE: Clarence Winfrey, Employee, Respondent, v. Archway
Services, Inc., Employer, and American Fire &
Casualty Insurance Co., Carrier, Appellants.
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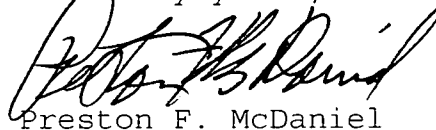
Dear Ms. Kitchings:

Please find enclosed my Petition for Rehearing to the Order issued by Judge Lockemy on March 7, 2016 along with the required number of copies and required filing fee.

By copy of this letter I am notifying and serving Counsel for the Appellants with a copy of this Motion for Rehearing.

As always, I appreciate all the courtesies and kindnesses shown to me by the Court.

Sincerely yours,



Preston F. McDaniel

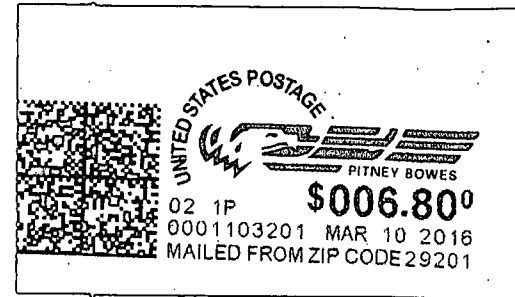
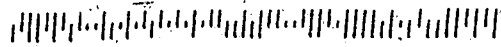
PFM/kth
Enclosures

cc: Brett H. Bayne, Esquire

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