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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission
Appellate Panel

Trial Court Case No. 0710622

RECEIVED
MAR 28 2016
SC Court of Appeals

Antonio Lazaro, by and through his
Guardian ad litem, Decidora Lazaro,
Employee,.....Appellant,

v.

Burriss Electrical, Employer, and
South Carolina Guaranty Association.,
Carrier,.....Respondents.

NOTICE OF APPEAL

Appellant, Antonio Lazaro, by and through his Guardian
ad Litem, Decidora Lazaro, appeals the May 28, 2015 Decision
of the Workers' Compensation Commission as affirmed by the
Decision and Order of the SC Workers' Compensation Commission
Appellate Panel filed December 23, 2015, and the SC Workers'
Compensation Commission Judicial Conference Decision and
Order denying the Motion for Rehearing filed February 22,
2016. Appellant received notice of entry of the Judicial
Conference Decision and Order (the final Agency Decision)
according to a "Certificate of Service" by email on February
22, 2016.

Pursuant to SC Code §42-17-60, the grounds of the appeal and/or the errors of law presented to the Court are set out hereinafter:

1. That pursuant to S.C. Code of Laws §42-17-40, the Claimant requests a review of all of the Findings of Fact, the Conclusions of Law, the Order and Award and of all rulings and decisions made by the Commission at the hearing, as contained in the Record or as made at any unrecorded pre-hearing conference, and in any communications concerning the claim, Order, Award and Decision rendered by the Commission in this matter as affirmed.

2. That the Commission erred as a matter of law by failing to make any conclusion of law under SC Code §42-9-301 which sets forth the basis upon which a lump sum award is to be made to a claimant or the claimant's dependents:

"when the employee so requests and the Commission deems it not to be contrary to the best interest of the employee or his dependents"

The Request for a partial lump sum was made in this case under that statute and there is simply no conclusion of law in the Decision by the Commission as required by law concerning that statute under which a decision of the Commission is to be based and therefore the Decision is not based on law and is based on speculation. There are no detailed Findings of Fact and Conclusions of Law as is required on the essential issue for decision.

3. That the Commission erred as a matter of law by failing to apply the cases decided, and the statutory authority for granting an increase in the compensation rate, under SC Code §42-1-40 and §42-9-10.

4. That the Commission erred as a matter of law by failing to increase the compensation rate where the undisputed evidence establishes that the Claimant's pre-injury wages establish a higher average weekly wage and resulting compensation rate than was applied in this matter; and where the evidence establishes a consistent pattern of wage increases on behalf of the Claimant in accordance with our Appellate Court decisions in Booth v. Midland Train; and where the undisputed evidence establishes that prior to the injury the Claimant was operating a flea market booth and that the Claimant's wife to make up for that lost income had to work three (3) jobs; and where the undisputed evidence establishes, per the evidence submitted by the employer, that all employees hired at the same time as the Claimant were making substantially more in wages than at the time of the accident.

5. That the Commission erred as a matter of law, and its decision is based on speculation and innuendo, where there is absolutely no evidence to support the Finding of Fact that the employees that were making higher wages, that were hired approximately at the same time as the Claimant,

were English speaking or that they were anything other than Hispanic workers.

6. That the Commission erred as a matter of law by finding that the Claimant was a non-English speaking Hispanic employee where there is absolutely no evidence, testimonial or otherwise to establish that fact and therefore this Finding is based on surmise, speculation and innuendo.

7. That the Commission erred as a matter of law and violated the Claimant's constitutional rights to due process and equal protection by finding that the,

"Claimant should be compared to other non-English speaking Hispanic employees."

This is an invalid, unconstitutional class based comparison that is not justified by the evidence and is a racist, anti-Hispanic, unconstitutional assessment that establishes bias and prejudice on behalf of the Commission.

8. That the Commission erred as a matter of law by setting forth in its Order concerning the Form 50, 51 request for an additional lump sum that a claimant in a workers' compensation case and in this case has only a, "vested interest in 500 weeks of workers' compensation benefits" where the Supreme Court has specifically ruled and specifically held in a lifetime benefits case that,

"SC Code Ann. §42-9-10 (1985) eliminates the 500 week cap on compensation for total, permanent disability . . ."

and where the Supreme Court has specifically held in a lifetime benefits case to the contrary that the:

"Mortality tables provide an adequate basis upon which to determine the present day value."

Thus, the commuting factor in a lifetime benefits case is not 500 weeks but is in fact the Claimant's lifetime as determined by the SC Mortality Table, SC Code §42-1-150. Therefore when the Claimant was awarded a lifetime compensation award, the award that vested in the Claimant at that time as a matter of law was based on the Mortality Table and the Claimant's life expectancy under that Table as of the date of that award; i.e., the Claimant's entitlement to lifetime benefits under SC Law vested for that period of time at that point. A Claimant cannot request a partial lump sum award greater than the value as established by the Mortality Table, nor can the value be less than the Claimant's life expectancy; particularly where the decision made in 2010 was not appealed and has become the law of the case.

9. That the Commission erred as a matter of law by considering evidence of the Claimant's life expectancy post-accident wherein under the SC Mortality Tables and SC Law, the Claimant's mortality and life expectancy is determined

immediately prior to the time of the accident. The Defendants cannot benefit from the injuries from his accident to establish a lesser life expectancy and any evidence after the accident on his life expectancy is contrary to law and is irrelevant, immaterial, prejudicial and should not have been considered and establishes that the Commission's decision is based on an abuse of discretion, is capricious and is contrary to statutory law. The very reason for the mortality table is to prevent such arguments.

10. That the Commission erred as a matter of law by failing to make a partial lump sum Award in the best interest of the Claimant's dependents under SC Code §42-9-301 and by failing to make Findings of Fact on that essential issue, wherein specifically due to the accident, the Claimant has an admitted shortened life span as a result of the accident and therefore his dependents' entitlement to compensation benefits will only apply as long as the Claimant is alive; and where the evidence establishes that the request for a partial lump sum was made to create annuities that would guarantee an income stream to the Claimant's family based on his specific vested lifetime award, that being his entitlement to benefits for his lifetime as established by the Mortality Table; wherein the law assumes and creates a legal fact concerning all litigation as to how long Mr. Lazaro will live. How can it be argued that to guarantee, his legally established period

of and entitlement to income from, his vested Award to his family is not in their best interests?

11. That the Commission erred as a matter of law by failing to Award a partial lump sum wherein the previous lump sum Award, which is the law of the case, specifically provided that the Claimant could request additional partial lump sums for the specific purpose of paying for college education and where the partial lump sum requested in this case was specifically to pay off debts incurred by Antonio Jr. for attendance at a college; and where the evidence established that Antonio Jr. had to stop college and enter the military due to his inability to pay for his college education; and where the evidence established that Oliver had in fact stopped college to go back to work to raise additional income for the family with the intent of allowing him to return to college. In addition, it is an improper consideration, under the best interests of the dependents test, for the Commission to consider whether or not the dependents would have obtained a loan to pay for college wherein the purpose of §42-9-301 is to provide for the best interest of the claimant or his dependents which in this case involves having money available through a partial lump sum to prevent them from having to pay for college or find some way to scrape up the money to afford college. Further

there is absolutely no evidence that it is not in their best interests.

12. That the Commission erred in making all of the Findings of Fact discussed and applied to both the decision to deny a partial lump sum under SC Code §42-9-301 and the refusal to increase the compensation rate under SC Code §42-1-40. There is no rational connection between the Findings made and the essential factual issues under law that were before the Commission for decision.

13. That the Commission erred as a matter of law by failing to award the Claimant penalties and interest pursuant to SC Code §42-9-90 and §42-9-240 wherein the lump sum payment due under the first Award was not made until more than 14 days after the date of the final decision on rehearing by the Court of Appeals nor within fourteen days of the last date of Defendants right to file for a Writ of Certiorari. The final Opinion of the Court of Appeals denying the Petition for Rehearing was filed on April 10, 2014 and under SC Appellate Court Rules, Rule 242(c), the Opinion of the Court of Appeals becomes final unless a Petition for a Writ of Certiorari is served on opposing counsel and filed with proof of service with the Court of Appeals and the Clerk of the Supreme Court:

"within thirty (30) days after the Petition for Rehearing . . . is finally decided by the Court of Appeals."

Thus the Opinion of the Court of Appeals became final at the latest on May 10th and payment of the award was not made within fourteen (14) days of that date. SC Code §42-9-240 provides in pertinent part that the:

"award shall become due seven days . . . from the date of such a judgment of the Court, on which date, all compensation then due shall be paid."

SC Code §42-9-90 provides in pertinent part,

"if any installment of compensation . . . payable in accordance with the terms of an Award by the Commission is not paid within fourteen days after it becomes due, as provided in §42-9-240, there shall be added to such unpaid installment an amount equal to ten percent thereof"

14. That the Commission erred as a matter of law and refused to follow the law concerning penalties and interests. In fact the case cited by the Defendants Hudson v. Lancaster Convalescence Center (Op. No. 27348, filed 1/08/14) does not stand for the proposition for which the Defendants cited it to the Commissioner and in fact in that case the Court of Appeals Order of Dismissal was combined with an Order of Remittitur whereas in this case there was a separate Opinion issued denying the Petition for Rehearing and holds that it is from that date that the time limits start. In addition, since no Writ of Certiorari was filed the Order became final as of the date it was filed and interest is due "from the original date of the award".

15. That the Commission erred as a matter of law by failing to make detailed Findings of Fact and Conclusions of Law on the issue of whether a partial lump sum was in the best interests of the dependents.

16. That the Full Commission erred as a matter of law by allowing a party to draft the consensus Order of the Panel and especially in this case where the Panel requested an Order of:

"Full Affirmation of the Hearing
Commissioner's findings of fact and
conclusions of law and decision"

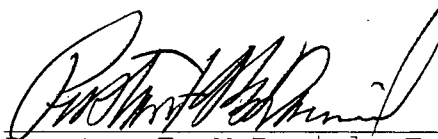
whereas the proposed Order submitted without notice to the Commission contained additional findings meant to bolster the position of the Defendants on appeal.

17. That the Commission erred as a matter of law by failing to grant the Motion for Rehearing for the reasons set forth in the Motion.

18. That the Commission erred as a matter of law by not making detailed findings of fact and conclusions of law on the "essential" issues raised by the Motion for Rehearing.

The above-referenced Exceptions are subject to amendment upon receipt of the Transcript in this matter.

Respectfully submitted,



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Attorney for Appellant

March 23, 2016

Other Counsel of Record:

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Attorney for Respondents

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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Workers' Compensation Commission
Appellate Panel

Trial Court Case No. 0710622

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Antonio Lazaro, Employee, Appellant,

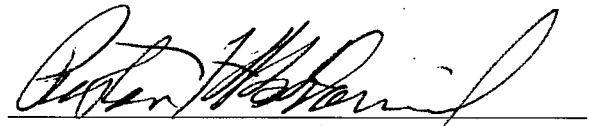
v.

Burriss Electrical, Employer, and
South Carolina Guaranty Association,
Carrier, Respondents.

PROOF OF SERVICE

I certify that I have served the **NOTICE OF APPEAL** by depositing a copy of it in the United States Mail, postage prepaid, on March 23, 2016 addressed to: Ms. Amy Bracy, South Carolina Workers' Compensation Commission, Post Office Box 1715, Columbia, South Carolina 29202 AND also serving a copy upon Brett H. Bayne, Esquire, McAngus, Goudelock & Courie, Post Office Box 12519, Columbia, SC 29211.

Dated: March 23, 2016



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Proudly representing injured workers
for over 30 years.

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MAR 28 2016

SC Court of Appeals

March 23, 2016

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

**RE: Antonio Lazaro, Employee, v. Burriss Electrical,
Employer, and South Carolina Guaranty Association,
Carrier.
Trial Court Case No. 0710622**

Dear Ms. Kitchings:

Enclosed for filing is a Notice of Appeal in the above case.
Also enclosed are the following:

1. Proof of Service of the Notice of Appeal on the Respondents;
2. A copy of the Orders which are to be challenged on appeal.
3. A Filing fee of \$100.00.

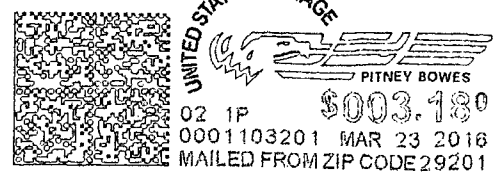
Sincerely yours,



Preston F. McDaniel

PFM/kth
Enclosures

cc: John E. Duncan, Esquire
Brett H. Bayne, Esquire
Ms. Amy Bracy, Judicial Director, SCWCC



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