

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission
Appellate Panel

Trial Court Case No. 1022189

RECEIVED

MAR 28 2016

SC Court of Appeals

Darrell Strickland, Employee, Appellant,

v.

NTCH, Inc., Employer, and Continental
Casualty Insurance Co., Carrier, Respondents.

NOTICE OF APPEAL

Appellant, Darrell Strickland, appeals the Decision and Order of the SC Workers' Compensation Commission filed April 2, 2014 and the Appellate Panel Decision filed December 23, 2015, and the SC Workers' Compensation Commission Judicial Conference Decision and Order filed February 22, 2016. Appellant received notice of entry of the Judicial Conference Decision and Order (the final Agency Decision) according to the "Certificate of Service", "electronically" 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 Commissioner 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.

2. That to the extent that the Commission's Decision can be considered as a final determination of the Claimant's rights to benefits for medical care for the left carpal tunnel syndrome and left cubital tunnel syndrome, the Claimant would submit to the Court and ask for review of Finding of Fact No. 6 wherein the basis of the Commission's Decision is that the request for medical treatment of the left elbow and left wrist is denied as being outside of the scope of Commissioner Williams' October 24, 2012 Order. In the 2012 Order, Commissioner Williams ordered that the Claimant shall be referred to:

"An orthopedist by the Defendants for evaluation and treatment of the left shoulder, arm and hand and his left leg, such treatment shall include any and all providers to whom the Claimant is referred by the authorized treating orthopedist for treatment of any problems found to be causally related to the accident and the injuries stemming from the accident."

It is absolutely clear from Commissioner Williams's Order that he intended for treatment to be provided through the orthopedic surgeon, in this case Dr. Wright, of the left shoulder, arm and hand.

3. That to the extent that the Commission's Decision can be considered as a final determination of the Claimant's rights to benefits for medical care for the left carpal tunnel syndrome and left cubital tunnel syndrome, the Commission erred as a matter of law in making Findings of Fact No. 3 that the Claimant failed to meet his burden of proof where under SC Code §42-15-60 specifically and under the Act in general this Decision is contrary to the evidence submitted and is contrary to the basic fundamental principles of the Workers' Compensation Act in reference to the provision of medical care.

4. That to the extent that the Commission's Decision can be considered as a final determination of the Claimant's rights to benefits for medical care for the left carpal tunnel syndrome and left cubital tunnel syndrome, that the Commission erred by making Findings of Fact No. 4 when Dr. Wright's medical opinion specifically was not qualified in his written opinion statement that it was his opinion to a reasonable degree of medical certainty that both conditions (elbow/wrist) stemmed from the accident. His opinion was only qualified to the extent that it was based on the history given by the patient and the truthfulness of the Claimant's statements to his doctors that he had in fact advised and informed his treating doctors right after the injury of his problems that he was having with his arm and hand. While not required by law based on Dr. Wright's stated opinion and while Defendants submitted no contrary evidence, the Claimant submitted medical records to that effect at the hearing

proving that he had reported the problems when he was first treated.

5. That to the extent that the Commission's Decision can be considered as a final determination of the Claimant's rights to benefits for medical care for the left carpal tunnel syndrome and left cubital tunnel syndrome, the Commission erred as a matter of law by making Finding of Fact No. 5 which holds that while there is no basis in the Record for discounting Dr. Wright's opinion which he stated to a reasonable degree of certainty as to the causal relationship of the injuries in question and the medical care requested, the Commission discounted the medical opinion because it was, "based on the Claimant's history only and not based on any medical documentation". This statement does not even go to the weight of the doctor's medical statement wherein the doctor stated his opinion. Most medical opinions are based upon the history given to the doctor by the patient and there is nothing in the Record to discredit (from either the Defendants or in the evidence in general) and/or which would serve as a basis to hold that the Claimant had not given his doctors, Dr. Wright, an accurate history. "When the Commission in effect disregards expert testimony, it must perforce first find other competent evidence in the Record upon which to base its findings." Herndon v. Morgan Mills, Inc. 246 S.C. 201, 143 SE 2d 376 (1965).

6. That to the extent that the Commission's Decision can be considered as a final determination of the Claimant's rights

to benefits for medical care for the left carpal tunnel syndrome and left cubital tunnel syndrome, the Commission's Decision discounting the doctor's opinion and denying the Claimant medical benefits as requested is based on speculation, surmise and innuendo.

7. That to the extent that the Commission's Decision can be considered as a final determination of the Claimant's rights to benefits for medical care for the left carpal tunnel syndrome and left cubital tunnel syndrome, the Commission's Decision which is based upon the position that Dr. Wright had never received the additional medical evidence as reflected in his records is an error at law which takes into consideration facts not in evidence and which is an assumption and speculation. The Claimant filed a Motion to be allowed to submit additional medical evidence received after the time for timely submission of such evidence at the Hearing and/or requested remand of the claim to the Hearing Commissioner for consideration of that evidence; both denied.

8. That to the extent that the Commission's Decision can be considered as a final determination of the Claimant's rights to benefits for medical care for the left carpal tunnel syndrome and left cubital tunnel syndrome, the Claimant would request that the Order of the Commission on Appeal be modified to reflect that the Decision of the Commission that such medical care was denied at the time of the Hearing was based on the available medical evidence at the hearing and specifically based on the fact that there was no evidence that Dr. Wright had seen the initial

records at the time of the hearing. This modification/clarification which would not preclude the Claimant from providing such additional medical evidence and reapplying for such medical care. The Order must be clarified to make it clear it was not based on a medical opinion that the problems were not causally related to the accident.

9. That to the extent that the Commission's Decision can be considered as a final determination of the Claimant's rights to benefits for medical care for the left carpal tunnel syndrome and left cubital tunnel syndrome, since medical care has been awarded for the arm and hand, and since the Claimant has not reached maximum medical improvement, and since there is nothing in the Act precluding the Claimant at any time from requesting additional medical care based on medical opinion evidence that meets the criteria under the Act as long as there is no specific determination that the medical care is not causally related, the Commission Order should be clarified to reflect it is not a final determination of that issue.

10. That to the extent that the Commission's Decision can be considered as a final determination of the Claimant's rights to benefits for medical care for the left carpal tunnel syndrome and left cubital tunnel syndrome, while not reflected in the Commission's Findings of Fact or Conclusions of Law or Decision, the Hearing Commissioner in her Statement of the Case reflects the Defendant's position that the Commissioner should not grant the Claimant this medical care because in, "medically complex

cases, the Claimant shall establish by medical evidence that an injury arose out of and the medical evidence is defined under that section as being expert opinion or testimony stated to a reasonable degree of medical certainty". There is absolutely no evidence that this is not, nor is this, a complex medical evidence case nor did the Defendants submit any evidence to establish that position in this case in reference to this Claimant's request for medical care.

11. That based on the substantial evidence in the Record, the Commission erred by failing to Award the requested medical care.

12. That based on the pleadings and issues before the Commission for decision, the Commission erred by addressing the cubital tunnel surgery. It was not an issue before the Commission.

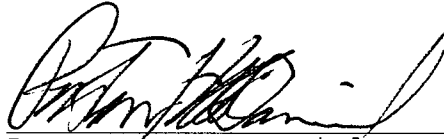
13. That the Commissioner erred by not considering and/or by not opening the Record, "in the interests of justice" and under a liberal construction of the Act in favor of benefits to the injured worker for the receipt of after-discovered evidence.

14. That the Commission erred by not granting the Motion for submission for after-discovered evidence.

15. That the Commission erred as matter of law by failing to grant rehearing for all of the reasons set forth in the Motion.

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

Respectfully submitted,



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March 23, 2016

Other Counsel of Record:

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Attorney for Respondents

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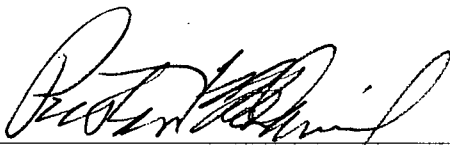
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PROOF OF SERVICE

I certify that I have served the **NOTICE OF APPEAL** by depositing a copy of it in the United States Mail, postage prepaid, on December 14, 2015 addressed to: Ms. Amy Bracy, Judicial Director, South Carolina Workers' Compensation Commission, Post Office Box 1715, Columbia, South Carolina 29202 **AND** also serving a copy upon James P. Newman, Esquire, Howser, Newman & Besley, Post Office Box 12009, Columbia, SC 29211.

Dated: March 23, 2016



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Proudly representing injured workers
for over 30 years.

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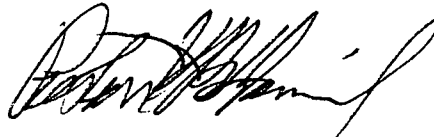
RE: Darrell Strickland, Employee, v. NTCH, Inc.,
Employer, and Continental Casualty Insurance Co.,
Carrier.
Trial Court Case No. 1022189

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.

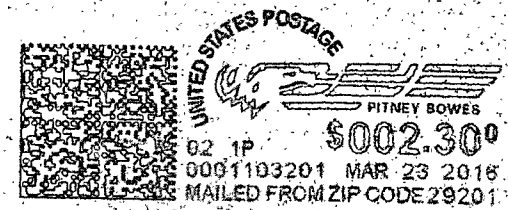
Sincerely yours,



Preston F. McDaniel

PFM/kth
Enclosures

cc: Christopher E. Costello, Esquire
James P. Newman, Esquire
Ms. Amy Bracy, Judicial Director, SCWCC



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