

ALVIN L. MENIE,

Appellants,

vs.

STATE ACCIDENT FUND,

Respondents.

CIVIL ACTION COVERSHEET

-CP-

2012CP4008290

RECEIVED

MAY 16 2016

SC Court of Appeals

(Please Print)

Submitted By: Preston F. McDaniel

Address: McDaniel Law Firm

1315 Elmwood Avenue

Columbia, SC 29201

SC Bar #: 3770

Telephone #: 803-771-7211

Fax #: 803-252-0709

Other:

E-mail: medlaw@hotmail.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint. NON-JURY TRIAL demanded in complaint.
- This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|--|---|---|
| <p>Contracts</p> <ul style="list-style-type: none"> <input type="checkbox"/> Constructions (100) <input type="checkbox"/> Debt Collection (110) <input type="checkbox"/> Employment (120) <input type="checkbox"/> General (130) <input type="checkbox"/> Breach of Contract (140) <input type="checkbox"/> Other (199) | <p>Torts - Professional Malpractice</p> <ul style="list-style-type: none"> <input type="checkbox"/> Dental Malpractice (200) <input type="checkbox"/> Legal Malpractice (210) <input type="checkbox"/> Medical Malpractice (220) Previous Notice of Intent Case #
20 <u>-CP-</u> <input type="checkbox"/> Notice/ File Med Mal (230) <input type="checkbox"/> Other (299) | <p>Torts - Personal Injury</p> <ul style="list-style-type: none"> <input type="checkbox"/> Assault/Slander/Libel (300) <input type="checkbox"/> Conversion (310) <input type="checkbox"/> Motor Vehicle Accident (320) <input type="checkbox"/> Premises Liability (330) <input type="checkbox"/> Products Liability (340) <input type="checkbox"/> Personal Injury (350) <input type="checkbox"/> Wrongful Death (360) <input type="checkbox"/> Other (399) | <p>Real Property</p> <ul style="list-style-type: none"> <input type="checkbox"/> Claim & Delivery (400) <input type="checkbox"/> Condemnation (410) <input type="checkbox"/> Foreclosure (420) <input type="checkbox"/> Mechanic's Lien (430) <input type="checkbox"/> Partition (440) <input type="checkbox"/> Possession (450) <input type="checkbox"/> Building Code Violation (460) <input type="checkbox"/> Other (499) |
| <p>Inmate Petitions</p> <ul style="list-style-type: none"> <input type="checkbox"/> PCR (500) <input type="checkbox"/> Mandamus (520) <input type="checkbox"/> Habeas Corpus (530) <input type="checkbox"/> Other (599) | <p>Judgments/Settlements</p> <ul style="list-style-type: none"> <input type="checkbox"/> Death Settlement (700) <input type="checkbox"/> Foreign Judgment (710) <input type="checkbox"/> Magistrate's Judgment (720) <input type="checkbox"/> Minor Settlement (730) <input type="checkbox"/> Transcript Judgment (740) <input type="checkbox"/> Lis Pendens (750) <input type="checkbox"/> Transfer of Structured Settlement Payment Rights Application (760) <input type="checkbox"/> Other (799) | <p>Administrative Law/Relief</p> <ul style="list-style-type: none"> <input type="checkbox"/> Reinstatement Driver's License (800) <input type="checkbox"/> Judicial Review (810) <input type="checkbox"/> Relief (820) <input type="checkbox"/> Permanent Injunction (830) <input type="checkbox"/> Forfeiture-Petition (840) <input type="checkbox"/> Forfeiture-Consent Order (850) <input type="checkbox"/> Other (899) | <p>Appeals</p> <ul style="list-style-type: none"> <input type="checkbox"/> Arbitration (900) <input type="checkbox"/> Magistrate-Civil (910) <input type="checkbox"/> Magistrate-Criminal (920) <input type="checkbox"/> Municipal (930) <input type="checkbox"/> Probate Court (940) <input type="checkbox"/> SCDOT (950) <input checked="" type="checkbox"/> Worker's Comp (960) <input type="checkbox"/> Zoning Board (970) <input type="checkbox"/> Administrative Law Judge (980) <input type="checkbox"/> Public Service Commission (990) <input type="checkbox"/> Employment Security Comm (991) <input type="checkbox"/> Other (999) |
| <p>Special/Complex /Other</p> <ul style="list-style-type: none"> <input type="checkbox"/> Environmental (600) <input type="checkbox"/> Automobile Arb. (610) <input type="checkbox"/> Medical (620) <input type="checkbox"/> Other (699) <input type="checkbox"/> Pharmaceuticals (630) <input type="checkbox"/> Unfair Trade Practices (640) <input type="checkbox"/> Out-of State Depositions (650) <input type="checkbox"/> Motion to Quash Subpoena in an Out-of-County Action (660) <input type="checkbox"/> Sexual Predator (510) | | | |

Submitting Party Signature:

Date: December 12, 2012

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCPP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.



FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Colleton, Florence, Greenville,
Hampton, Horry, Jasper, Lexington, Pickens (Family Court Only), and Richland

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
)
 ALVIN L. MENIE,)
 Appellant,)
)
 vs.)
)
 STATE ACCIDENT FUND,)
 Employer and Carrier,)
)
 Respondents.)

IN THE COURT OF COMMON PLEAS
 FOR THE FIFTH JUDICIAL CIRCUIT

CERTIFICATE OF EXEMPTION
 FROM ADR

DOCKET NO. _____

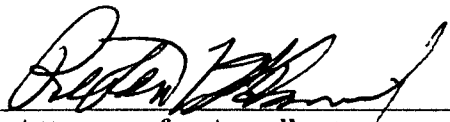
2012 DEC 14 PM 1:10
 RECEIVED
 CLERK OF COURT
 JUDICIAL CIRCUIT
 FIFTH JUDICIAL CIRCUIT
 RICHLAND COUNTY
 SOUTH CAROLINA

I certify that this action is exempt from ADR because:

- this is a special proceeding or action seeking extraordinary relief such as mandamus, habeas corpus of prohibition;
- this action is appellate in nature;
- this is a post-conviction relief matter;
- this is a contempt of court proceeding;
- this is forfeiture proceeding brought by the State;
- this is a case involving a mortgage foreclosure; or
- the parties submitted the case to voluntary mediation with a certified mediator prior to the filing of this action.

Preston F. McDaniel, Esquire
 McDaniel Law Firm
 1315 Elmwood Avenue
 Columbia, South Carolina 29201
 803-771-7211

Andrew E. Haselden, Esquire
 Howser, Newman & Besley
 215 East Bay Street, Suite 303
 Charleston, South Carolina 29401
 843-216-6940


 Attorneys for Appellant

 Attorney for Respondents

Date: December 12, 2012

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
OF THE FIFTH JUDICIAL CIRCUIT
C/A NO. _____

ALVIN L. MENIE,)
)
Employee,)
)
Petitioner,)
)
v.)
)
STATE ACCIDENT FUND,)
)
Employer,)
)
and,)
)
SELF-INSURED,)
)
Carrier,)
)
Respondents.)
_____)

**PETITION AND NOTICE
OF APPEAL**

JEANELLE H. BRADBE
C.C.P. & G.S.

2012 DEC 14 PM 1:10

FILED

TO: ANDREW E. HASELDEN, ESQUIRE, ATTORNEY FOR THE RESPONDENTS:

YOU WILL PLEASE TAKE NOTICE that the Employee/Appellant hereby petitions and appeals, pursuant to Sections 1-23-380 and 42-17-60 South Carolina Code of Laws (1976, as amended), as applicable to all claims for injury occurring prior to July 1, 2007 as well as other applicable law, from the Decision and Order of the South Carolina Workers' Compensation Commission dated November 29, 2012 and received by the Petitioner by Electronic Mail on November 29, 2012. (Note the Claimant has not been properly notified pursuant to SC Code §42-17-40 and §1-23-350).

The grounds for the appeal are as follows:

1. That since the Panel of the Full Commission incorporated verbatim the Findings of Fact and Conclusions of Law

made by the Hearing Commissioner (with one (1) exception as to a Finding which the Full Commission notes as a scrivener's error in Finding of Fact No. 22), the Petitioner hereby petitions and appeals as to all of the issues submitted to the Full Commission for review from the Hearing Commissioner's Order dated April 11, 2012 as issues on appeal from the Decision of the Commission with said grounds for appeal being attached hereto and incorporated herein by reference as Exhibit "A".

2. That in addition to the above-exceptions, the Commission erred as a matter of law by failing to perform its review responsibility by making detailed Findings of Fact and Conclusions of Law as to each issue of law and fact raised before the Full Commission for review. The Decision of the Commission is in violation of both statutory and case law which requires the Commission to make detailed Findings of Fact and Conclusions of Law that are sufficiently definite and detailed enough to determine whether or not the decision on the facts is supported by the evidence and whether or not the law has been properly applied.

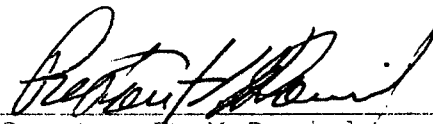
3. That the Commission erred as a matter of law by making only cursory Findings of Fact and Conclusions of Law in violation of law and by requesting that Defense Counsel draft the Order of the Commission wherein the law specifically requires that the Order of the Commission must be issued by the Commission itself as specifically set out under SC Code §42-17-40, 50 and 60 and under the Administrative Procedures Act, §1-23-340, 350 and 380,

and under the Commission's own Regulations under Reg. 67-709 which requires the Commission make detailed Findings of Fact and record those in the Record.

4. That the Commission erred as a matter of law by requiring the injured worker, who was the Claimant and Appellant to the Full Commission in this matter, to purchase and file the original and a copy of the Transcript of Record. The Commission has no statutory authority to require a party to pay for the Transcript of Record, and in fact both the Administrative Procedures Act and the Commission statutory authority require that the Commission file and review the Record as part of its statutory responsibility. To require a party to pay for a Transcript of Record has a chilling effect on the due process rights of the individual parties to review.

5. That the Commission erred as a matter of law in denying benefits to the client where the reliable, probative and substantial evidence in the Record does not support such denial and in fact the uncontradicted evidence supports an Award of benefits as a matter of law.

Respectfully submitted,



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

Attorney for Petitioner/Appellant

December 12, 2012



Claimant's Name: Alvin L. Menie SSN: 444 - 42 - 2581 Employer's Name: State Accident Fund
Address: 112 Pinestraw Circle Address: Post Office Box 102100
City: Lexington State: SC Zip: 29073 City: Columbia State: SC Zip: 29221
Home Phone: () - Work Phone: () - Insurance Carrier: Self-Insured
Preparer's Name: Preston F. McDaniel Law Firm: McDaniel Law Firm Preparer's Phone #: (803) 771 - 7211

REQUEST FOR COMMISSION REVIEW

Request for Commission Review by claimant employer (check one) Date of injury: 3-3-2003 (m/d/yyyy)

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 Attachment.

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

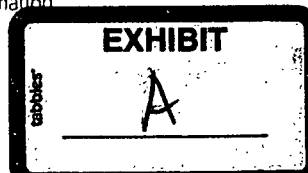
I certify that I have served this document pursuant to R.67-211 by delivering a copy to Andrew E. Haselden, Esquire
HOWSER, NEWMAN & BESLEY, 215 East Bay Street, Suite 303, Charleston, SC 29401 Name
Address

on the 30th day of April, 2012 by first class mail personal service certified mail.

Preston F. McDaniel Claimant's Attorney Title April 30, 2012 Date
Preparer's Signature

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 four copies of this form with the Judicial Department. The appeal must be postmarked no later than 30 days from the date of service of the Hearing Commissioner's decision. R.67-701 and R.67-205. 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.



ATTACHMENT TO FORM 30

Alvin L. Menie v. State Accident Fund
WCC FILE NO: 0307461

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 Hearing Commissioner in this matter.

2. That the Hearing Commissioner erred as a matter of law in his application of the law under S.C. Code §42-1-160 and the application of the Claimant's burden of proof which is by a preponderance of the evidence and finding that the Claimant as a matter of law did not establish that he had sustained a compensable heart-related condition as a result of injury by accident stemming from the unusual and extraordinary conditions in his employment occurring just prior to and at the time of his first atrial fibrillation that resulted in his continuing and permanent condition thereafter.

3. That the Hearing Commissioner erred as a matter of law by allowing the testimony of Mr. Kirk Adair who was not employed with the State Accident Fund as an auditor or in any capacity during the time that was relevant to whether or not the Claimant's condition arose out of and in the course of his employment and constituted an injury by accident within the meaning of the Act. That testimony was irrelevant and immaterial and prejudicial to the Claimant as it compared totally dissimilar times in the Auditing Department. This would be similar to comparing the stress levels of military personnel stationed in Hawaii on December 7, 1941 to that of military personnel assigned to Hawaii on December 7, 1991.

4. That the Hearing Commissioner erred as a matter of law by allowing the testimony of Mr. Murphy in reference to any reasons for the Claimant's pay raise or interpretation of any of the documents in reference to the conditions in the Auditing Department and during the time the Claimant developed his heart-related condition and as to whether or not the conditions in that Department constituted unusual and extraordinary conditions in the employment.

5. That the Hearing Commissioner erred in making specific Findings of Fact in reference to the testimony of Ms. Holloman and that of the Claimant and citing that testimony without noting in the Findings of Fact that both Ms. Holloman who was an Auditor in the Auditing Department at the time that the Claimant's heart

condition came about and the Claimant's was that the conditions that existed between January 1, 2003 and March 3, 2003 (including but not limited to the fact that the Agency just prior to this time had announced the largest increase in premiums for the account holders that had ever occurred and that the Auditing Department as far as handling all of the functions had gone from three (3) Auditors to one (1) Auditor) wherein based on these facts and all the relevant facts at that time, in their opinions those work conditions for an Auditor in the Auditing Department constituted unusual and extraordinary conditions to the usual and ordinary job of the Auditor in the Auditing Department of the State Accident Fund at this time. There is simply no other evidence as to that condition at that time.

6. That the Hearing Commissioner further erred as a matter of law by not finding that the Claimant sustained an injury by accident due to unusual and extraordinary conditions wherein both the Manager of Administrative Services and the Deputy Director, Ross Gamble, in approving a performance pay raise on April 15, 2003 in reference to the time of the premium increase and the Auditing Department going from three (3) to one (1) Auditor to handle all of the functions of the Auditing Department stated, "you helped to keep these essential functions going throughout a period of transition caused by staff turnover and other extraordinary circumstances." There was also no opinion stated contrary to this and neither Ms. Flateau nor Mr. Ross Gamble were called as witnesses to further explain their opinion and therefore the Commissioner erred by not finding that the Claimant was exposed to unusual and extraordinary conditions where management thought the conditions were extraordinary.

7. That the Hearing Commissioner erred by making Finding of Fact No. 17 which is an error of law under law by finding that, "linking heart disease to work-based on what is unusual and extraordinary is impossible for a doctor to conclude, legally." This is a mis-statement of the law and under the uncontested medical evidence both from the psychologist hired by the Defendants to perform an evaluation who found that Mr. Menie, "appears to have suffered a cardiac arrhythmia from an accumulation of stress on the job"; and the treating cardiologist who found based on a review of the job responsibilities of Mr. Menie that in his, "job responsibilities and work load as set forth above and specifically between December 27, 2002 and March 4, 2003" stated to a reasonable degree of medical certainty was the, "cause of his onset of high blood pressure and the initial atrial fibrillation" and further that it was the, "physical and emotional job stress placed upon him by his job duties and responsibilities that was the cause of this condition." There is no medical evidence to the contrary. Again, it was his, "opinion to a reasonable medical certainty that Mr. Menie's cardiological problems of atrial fibrillation and high blood pressure were caused by the physical and emotional stress arising out of and from his job duties, responsibilities and work load."

8. That it was an error of law as not being based on the evidence and being on the basis of surmise, speculation and innuendo for the Commissioner to make Finding of Fact No. 18 in reference to the pressure that the Claimant was under and that it was not unusual based on the witness testimony. There is absolutely no evidence from any witness that the conditions to which Mr. Menie was exposed was not contrary to the usual and ordinary conditions of employment as an Auditor in the State Accident Fund during the period of time that was alleged to have resulted in his condition and in fact all of the testimony was to the contrary that the conditions were unusual and extraordinary in his employment during that period of time.

9. That it was an error of law for the Hearing Commissioner to making Finding of Fact No. 19 wherein he found that such conditions as labor turnover, illness of co-workers and computer problems are common in almost all work environments and are not unusual. This is a specific error of law and represents a total lack of understanding of the prior case law and our statutory law in reference to unusual and extraordinary conditions. In multiple cases including the case of Shealy v. Aiken Co., Stokes v. First National, Smith v. NCCI, and others wherein the Court has found all three (3) of these factors to be conditions that can constitute unusual and extraordinary conditions in the employment. This blanket Finding of Fact which is not a Finding based on the evidence and on applicable law is arbitrary, capricious and is evidence that the Commissioner's decision was based upon an abuse of discretion.

10. That the Hearing Commissioner erred as a matter of law by finding Finding of Fact No. 20 which is irrelevant to whether or not the conditions are unusual and extraordinary to which the Claimant was exposed.

11. That the Hearing Commissioner erred as a matter of law by making Finding of Fact No. 21 specifically where there is no evidence that the Claimant, "voluntarily took on the position" and it is further an error of law because the Finding that he was commended or received a pay raise for his work has nothing to do with and is irrelevant and immaterial to the decision of whether or not the Claimant sustained injury by accident arising out of and in the course of his employment due to unusual and extraordinary conditions and also further establishes that the Commissioner's Decision was arbitrary, capricious and characterized by an abuse of discretion.

12. That the Hearing Commissioner erred as a matter of law by making Finding of Fact No. 22 wherein he states that Dr. Hendricks saw the Claimant six (6) times in 2003 and 2004 and did not mention stress. This Finding is irrelevant but more importantly it is contradicted by Dr. Hendricks' testimony and evidence presented that when he first saw Mr. Menie in the hospital following his initial atrial fibrillation on March 3, 2003 he and Mr. Menie specifically discussed at that time that he was under a lot of job stress at work.

13. That the Hearing Commissioner erred as a matter of law both concerning his statement as to what a medical doctor may testify to concerning whether or not conditions are unusual and extraordinary and as to the doctor's opinion wherein the doctor stated that it was his opinion that Mr. Menie's atrial fibrillation and high blood pressure, "resulted from, as Mr. Gambrel put it 'extraordinary' job duties, responsibilities and workload of his job." Any expert may testify as to the ultimate issue in any case as a matter of law under our existing evidence law and the Commissioner's statement to the contrary is an error of law and must be reversed.

14. That the Hearing Commissioner erred as a matter of law in making Conclusion of Law No. 2 wherein such Conclusion of Law is contrary to the established precedents under S.C. Code §42-1-160 as to the establishment of a heart-related condition as being due to unusual and extraordinary conditions.

15. That the Hearing Commissioner erred as a matter of law by not finding the claim compensable where the employer had agreed to accept the claim in principle following the accident when the claim was filed.

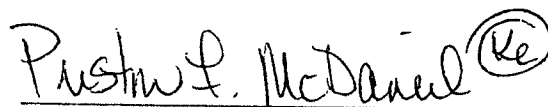
16. That the Hearing Commissioner erred as a matter of law in making Conclusion of Law No. 3, 4 and 5 all of which are based upon Conclusion of Law No. 2 that he did not sustain an injury by accident upon which these Conclusions of Law are based.

17. That the Hearing Commissioner erred as a matter of law by making Conclusion of Law No. 7 which is also based upon the decision that the Claimant did not sustain his burden of proof of proving as a matter of law that he had sustained injury by accident as a matter of law under the Act.

18. That the Hearing Commissioner erred as a matter of law by finding that the Claimant had not established that the conditions of employment were unusual and extraordinary where he does not state why each of the issues and conditions as presented to his treating doctor were not unusual and extraordinary.

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

Respectfully submitted:


Preston F. McDaniel
Attorney for Claimant

April 30, 2012