

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
APPELLATE PANEL

Appellate Case No.: 2015-002575

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SC Court of Appeals

Johnny Tucker, Employee.....Appellant,

v.

SC Department of Transportation, Employer, and State Accident Fund, Carrier.....Respondents.

INITIAL BRIEF OF RESPONDENTS

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STATEMENT OF ISSUES ON APPEAL

- I. Whether the Commission correctly ruled Appellant failed to timely file a change of condition due to Appellant's failure to request a hearing within twelve months from date of last payment of compensation as statutorily mandated by S.C. Code Ann. §42-19-90.
- II. Whether the Commission correctly denied the Appellant's request for a change of condition due to Appellant's failure to request a hearing for a change of condition within twelve months of the last payment of compensation.
- III. Whether the Commission correctly ruled Respondents were not barred by estoppel from raising Appellant's failure to timely file a change of condition as a defense.
- IV. Whether the Commission properly denied Appellant's request for rehearing within the Commission's discretion.

STATEMENT OF THE CASE

Appellant sustained an admitted injury to his left shoulder, specifically a left scapula fracture, on May 2, 2011. (Defs.' Form 58 Pre-Hr'g Br., Oct. 10, 2014.) As a result of this injury, Appellant was awarded permanent partial disability compensation by the Workers' Compensation Commission and received such compensation from Respondents on November 28, 2012. (Appellate Panel Order, Sept. 10, 2012; Form 19 Compensation Receipt, Nov. 28, 2012.) On May 2, 2013, Appellant filed a Form 50 Notice of Claim alleging Appellant sustained a change in condition. (Form 50 Notice of Claim, May 2, 2013.) On July 30, 2014, Appellant filed a Form 50 Request for Hearing seeking additional medical treatment and temporary total disability for a change of condition from the injury sustained on May 2, 2011. (Form 50 Req. Hr'g, July 30, 2014.) On August 20, 2014, Respondents timely filed a Form 51 Answer to Request for Hearing denying Appellant's change of condition for the worse. (Form 51 Answer to Req. Hr'g, Aug. 20, 2014.) Respondents timely filed their Pre-Hearing Brief alleging Appellants failed to timely file his Request for Hearing for change of condition. (Form 58 Pre-Hr'g Br.)

On October 21, 2014, the Single Commissioner held a hearing in Hartsville, South Carolina. (Notice of Hr'g, Aug. 22, 2014.) Arguments were presented by both parties on the issues of whether Appellant is entitled to medical treatment from a change of condition. Respondents maintained that Appellant's Form 50 Request for Hearing was filed more than twelve months from the date of last payment of compensation, and therefore, Appellant's request for a change of condition was not timely and the Commission had no jurisdiction over the same. (Hr'g Tr., Oct. 21, 2014, 4:18-6:10).

Appellant argued he filed a Form 50 Notice of Claim within twelve months after last payment of compensation, and therefore, his change of condition request is timely. (Id.)

The Single Commissioner found that Appellant failed to file for a change of condition for the worse within the statutorily required time period because the filing of a Form 50 Notice of Claim was not a sufficient “application” within the meaning of S.C. Code Ann. §42-17-90. (Hr’g. Order, April 14, 2015.) The Single Commissioner found that “application” within the meaning of the statute required the Appellant to request the Commission take some action as opposed to simply giving the Commission notice of a claim. (Id.)

On April 21, 2015, Appellant filed a Form 30 Request for Commission Review. (Form 30, Apr. 23, 2015.) Appellant filed a Brief with the Full Commission, (Claimant’s Br. Full Commission, June 15, 2015.) and Respondents filed a responsive Brief. (Defs.’ Br. Full Commission, June 29, 2015.) On July, 21, 2015, a Full Commission Hearing was held on Appellant’s Form 30 Request for Commission Review. (Full Commission Hr’g Tr., July 21, 2015.) On September 11, 2015, the Full Commission affirmed the Single Commissioner’s ruling in full. (Appellate Panel Order, Sept. 11, 2015.) On October 8, 2015, Appellant filed a Request for Rehearing, (Claimant’s Req. for Reh’g, Oct. 8, 2015) and on October 16, 2015, Respondents filed a response. (Defs.’ Resp. to Claimant’s Req. for Reh’g, Oct. 16, 2015.) On November 16, 2015, the Commission dismissed Appellant’s Motion for Rehearing. (Judicial Conference Decision and Order, Nov. 16, 2015.)

On December 16, 2015, Appellant filed his Notice of Intent to Appeal. This appeal follows.

STATEMENT OF THE FACTS

Appellant sustained a left shoulder injury on May 2, 2011 and was awarded permanent partial disability benefits for the same by the Commission. (Appellate Panel Order, Sept. 10, 2012.) Appellant received the last payment of compensation of his workers' compensation benefits on November 28, 2012. (Form 19 Compensation Receipt.) On May 2, 2013, Appellant filed a Form 50 Notice of Claim alleging a change of condition. (Form 50 Notice of Claim.) Appellant specifically marked Box 13a. indicating that he was not requesting a hearing at that time. (*Id.*) Nearly fifteen months later, on July 30, 2014, Appellant filed a Form 50 Request for Hearing alleging a change of condition. (Form 50 Req. Hr'g.) Respondents timely filed a Form 51 Answer to Request for Hearing denying that Appellant had sustained a change of condition for the worse. (Form 51 Answer to Req. Hr'g.)

A hearing was held on October 21, 2014. (Hr'g Tr., Oct. 21, 2014.) Prior to the hearing, Respondents timely filed their Pre-Hearing Brief noting that one of the facts in controversy is "whether the Claimant timely filed Hearing request for change of condition." (Defs.' Form 58 Pre-Hr'g Br.) Furthermore, Respondents amended their Form 51 by way of the Pre-Hearing Brief to assert that Appellant failed to request Commission review of the change of condition within the required time period. (*Id.*) Appellant never raised an objection prior to or during the hearing to Respondents' assertion that Appellant's alleged change of condition was not timely. (Hr'g Tr., Oct. 21, 2014.) The Single Commissioner determined that pursuant to S.C. Code Ann. §42-17-90, an application for review of change of condition requires a hearing request to be made within twelve months from the date of last payment of compensation. (Hr'g. Order, Apr.

14, 2015.) On September 11, 2015, the Appellate Panel affirmed the Single Commissioner's ruling in full and ordered that Appellant did not timely file for a change of condition. (Appellate Panel Order, Sept. 11, 2015.)

STANDARD OF REVIEW

In workers' compensation cases, the South Carolina Workers' Compensation Commission is the trier of fact. Hunter v. Patrick Construction Co., 289 S.C. 46, 344 S.E.2d 613 (1986). The South Carolina Administrative Procedures Act, S.C. Code Ann. §1-23-380(5)(1976), establishes the "substantial evidence" rule as the standard for judicial review of a decision of the Commission:

The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the administrative agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions or decisions are:

- (d) affected by other error of law; [or]
- (e) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record.

An appellate court, in workers' compensation appeals, may overturn a conclusion of the Workers' Compensation Commission if that conclusion is "clearly erroneous in view of the reliable, probative and substantial evidence on the whole record." Lark v. Bi-Lo, Inc., 276 S.C. 130, 276 S.E.2d 304 (1981).

The test is whether the decision of the Commission is supported by substantial evidence. Substantial evidence is not a mere scintilla of evidence, nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached in order to justify its action.

Mullinax v. Winn-Dixie Stores, Inc., 318 S.C. 431, 458 S.E.2d 76 (Ct. App. 1995).

Therefore, an appellate court may overturn findings of fact of the Commission if there is no reasonable probability that the facts could be as related by the witnesses upon whose testimony the finding was based. Lowe v. Am-Can Transport Services, Inc., 283 S.C. 534, 324 S.E.2d 87 (Ct. App. 1984). Further, an award cannot be based on surmise, conjecture, or speculation. Tiller v. National Health Care Center of Sumter, 334 S.C. 333, 339, 513 S.E.2d 843, 845 (1999); *see also*, McDowell v. Stilley Plywood Co., 210 S.C. 173, 41 S.E.2d 872 (1947) (holding testimony that is based on surmise, conjecture, and speculation has no probative value). While a finding of fact of the Commission will normally be upheld, such a finding may not be based upon surmise, conjecture, or speculation; instead, it must be founded on evidence of sufficient substance to afford a reasonable basis for it. Edwards v. Pettit Constr. Co., 273 S.C. 576, 257 S.E.2d 754 (1979).

ARGUMENT

I. The Commission correctly ruled Appellant failed to timely file a change of condition due to Appellant's failure to request a hearing within twelve months from date of last payment of compensation as statutorily mandated by S.C. Code Ann. §42-17-90.

South Carolina Code Ann. §42-17-90 addresses a claimant's right to seek Commission review of an award on a change of condition. In order prevail on a change of condition, a claimant must: (1) make an application on the ground of a change in condition; (2) prove by a preponderance of the evidence that there has been a change of condition after last payment of compensation; and (3) review must not be made after twelve months from date of last payment of compensation. S.C. Code Ann. §42-17-90. The law specifically dictates the time within which a change of condition claim must be

asserted, stating “the review must not be made after twelve months from the date of the last payment of compensation pursuant to an award by this title.” (Id.) The South Carolina Supreme Court interpreted this language to mean an application for review must be made within one year after the last payment of compensation. Allen v. Benson Outdoor Advertising Co., 236 S.C. 22, 112 S.E.2d 722 (1960). Based on the holding in Allen, S.C. Code Ann. §42-17-90 establishes a one year statutory requirement for filing a request for hearing on a change of condition and allowing hearing requests to be filed after this established statutory period violates the statute.

- A. The plain language of S.C. Code Ann. § 42-17-90(A) indicates that a claimant must file a Request for a Hearing on the ground of a change of condition within twelve months from the date of the last payment of compensation.**

Appellant failed to make an application for review on the ground of change of condition within twelve months from last payment of compensation, and therefore, he cannot meet the statutory requirements of S.C. Code Ann. §42-17-90. The canons of statutory construction dictate that unless the language of a statute is ambiguous, the court’s analysis should rest on the ordinary meaning of the statutory language as it is written. Strickland v. Strickland, 375 S.C. 76, 88, 650 S.E.2d 465, 472 (2007). Therefore, the first step in this case is to determine if the plain meaning of the language in S.C. Code Ann. §42-17-90(A) is clear. Section 42-17-90(A) states in pertinent part:

On its own motion or on the application of a party in interest on the ground of a change in condition, the commission may review an award and on that review may make an award ending, diminishing, or increasing the compensation previously awarded, on proof by a preponderance of the evidence that there has been a change of condition caused by the original injury, after the last

payment of compensation. . . . The review does not affect the award as regards any monies paid and the **review must not be made after twelve months from the date of the last payment of compensation** pursuant to an award provided by this title.

(emphasis added).

The word “application” signifies that a claimant must petition the Commission to take action. Indeed, Black’s Law Dictionary defines the term application to mean a “request or petition.” Black’s Law Dictionary 108 (8th ed. 2004). Similarly, a motion is defined as a written or oral application requesting a court to make a specified ruling or order. Id. at 1036. Taking the words in the statute together, “motion” and “application” can be used interchangeably and both mandate an affirmative request be made. Thus, the statute is clear that in order for a claimant to seek the Commission’s review of a previous award based on a change of condition, he must request a hearing on the matter. The Commission lacks jurisdiction over an alleged change of condition if a hearing is not requested within twelve months after payment of last compensation.

Appellant argues that filing notice of a claim for change of condition is sufficient to satisfy S.C. Code Ann. §42-17-90. However, simply filing a notice of claim is not a request or petition and in no way is a request for the Commission to take action. To accept Appellant’s position would be to ignore the plain language of the statute that mandates making an application to the Commission for review.

Moreover, the South Carolina Supreme Court has stated that “[t]he cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature.” Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) (citation omitted). “The text of a statute as drafted by the legislature is considered the best evidence of the

legislative intent or will.” Id. It is clear that the legislature specifically included the one year application requirement in S.C. Code Ann. §42-17-90 to allow claims to reach resolution and prevent prejudice to employers and insurance carriers alike. Conversely, Appellant’s proposed interpretation of the statute would incentivize claimants to file a “Notice of Claim” to toll the one year statutory requirement for a change in condition even if they had not yet experienced a worsening of condition. They could then, at any point in the future, file a request for hearing and be awarded benefits.

Appellant’s proposed interpretation would effectively nullify the one year statutory filing requirement and would be in complete dereliction to the legislature’s intent. It is inconceivable that the legislature included the twelve month application period merely to test claimants’ acumen for filing paperwork. Appellant’s argument asks this Court to interpret the plain and ordinary meaning of a time limit in a way that would render such time limit meaningless. Accepting Appellant’s argument would allow claimants to file meaningless claim notices to meet a time requirement and then sit idle for years to come before asking the Commission to take some action. The legislature did not intend claimants to circumvent the clear time period in such a way, as evidenced by the fact that there is a time period at all.

The controlling statute for a change of condition is not ambiguous. A claimant must make an application, by requesting a hearing, on the grounds of a change of condition within one year of the last payment of compensation. The legislative intent is clear. The legislature purposely chose the language in the statute to restrict claimants from seeking additional benefits years after the adjudication of the original claim.

Appellant makes the blanket assertion that “there is no statute, Regulation or Supreme Court decision interpreting the word ‘application’ to mean anything other than filing of a claim.” (Appellant’s Initial Br. 14.) However, Appellant cites no controlling authority supporting this broad and inaccurate conclusion. Appellant purports to rely on Allen to establish that the Commission should use a liberal construction of the statute to allow for the Commission’s review of the claim. Though the Court in Allen did apply a liberal construction to the change of condition statute, it did so to prevent a timely and properly submitted hearing request for a change of condition from being time barred under the statute where the Commission itself did not hear the claim within a one year period. 236 at 30, 112 S.E.2d at 726. Allen prevents injured workers from being penalized for timing and scheduling factors out of their control once their request for hearing has been properly submitted to the Commission. This rationale does not apply to the facts at hand as Appellant is not being penalized by scheduled factors out of his control. Appellant simply did not request a hearing within the statutorily required period.

Additionally, Appellant quotes the Allen decision and emphasizes the word “claim” in support of the notion that filing a “claim only” is akin to applying for a hearing. (Appellant’s Initial Br. 15.) The quote is from a West Virginia case and was used by the Court in Allen to support its holding that the claimant should not be penalized for external factors. 236 S.C. at 30, 112 S.E.2d at 726. The Court did not quote West Virginia’s holding to establish that filing a “Notice of Claim” meets the statutory requirements of S.C. Code Ann. §42-17-90. In fact, this was never an issue in Allen as the claimant in that case, unlike the case at hand, timely filed an application for a hearing.

Lastly, the court is to give deference to an administrative agency's interpretation of an applicable statute and its own regulations. Brown v. South Carolina Dep't Health and Env'tl. Control, 348 S.C. 507, 515, 560 S.E.2d 410 (2002). Procedurally, the Single Commissioner found in Respondents favor interpreting S.C. Code Ann. §42-17-90 to mean that an "application" requires the Appellant to request the Commission to take some action as opposed to simply providing the Commission notice of a claim. (Hr'g. Order, Apr. 14, 2015.) This decision was subsequently affirmed by the Workers' Compensation Appellate Panel. (Appellate Panel Decision and Order, Sept. 11, 2015.)

B. SC Workers' Compensation Commission Regulations support the Commission's determination that the claim for a change of condition is only properly established through the filing of a Request for a Hearing.

In an effort to circumvent the plain language of S.C. Code Ann. §42-17-90, Appellant attempts to identify inconsistencies in the Regulations of the Act to bolster his argument that the word "application" means anything other than a request for a hearing. Appellant argues that S.C. Reg. 67-206 and 67-207 "basically" allows for a bifurcated process in which he can simply file a claim with the Commission on a change of condition without requesting a hearing at the same time. (Appellant's Initial Br. 12.) However, S.C. Reg. 67-206 and 67-207 only detail the required information and filing instructions for completing forms, including a hearing request and a notice of claim. The regulations do not purport to establish the sufficiency of any form to comply with the requirements of any statute, recommend the merits or usage of any form, or create a bifurcated system under any statute.

Appellant continues his crusade to evade the plain meaning of S.C. Code Ann. §42-17-90 by quoting a portion of S.C. Reg. 67-602(c) as proof that the Workers'

Compensation Act allows for filing a “claim only” for a change of condition and that this is somehow separate and apart from filing a hearing request on the grounds of change of condition. (Appellant’s Initial Br. 13.) In doing so, he conveniently omits the remaining language of the Regulation. S.C. Reg. 67-602(c) states that “[i]n a claim involving a change of condition, the moving party must attach to the *hearing request form* a medical report(s) indicating a change in condition.” (*emphasis added*). S.C. Reg. 67-207(B) states that filing a Form 50 Request for a Hearing simultaneously establishes a claim with the Commission. In other words, it is not a bifurcated process. Therefore, Appellant is correct in his assertion that S.C. Reg. 67-602 specifically refers to the requirements of setting a hearing on “a claim involving a change of condition,” but he ignores that the establishment of that “claim” is only accomplished through filing a Form 50 Request for a Hearing.

II. Respondents properly pled the defense that Appellant failed to make an application for a change of condition within twelve months from the date of last payment of compensation.

As set forth above, Appellant does not meet the statutory requirements of S.C. Code Ann. §42-17-90. It is inherent that if Appellant did not meet all the requirements, then he did not sustain a change of condition for the worse under the law. Respondents assert the inquiry ends there as failure to meet the requirements bars Appellant from receiving any further benefits and deprives the Commission of jurisdiction. However, in another attempt to circumvent the entire meaning and purpose of the law, Appellant asserts that Respondents are barred from arguing that Appellant cannot meet the requirements of S.C. Code Ann. §42-17-90.

Appellant argues that Respondents are barred from asserting Appellant's request for a hearing for a change of condition was untimely because Respondents did not raise this defense in their Form 51 response. Notably, Appellant never even raised this argument at the Single Commissioner Hearing. (Hrg. Tr.) As discussed above, this argument must fail because the one year filing period is not an affirmative defense to be pled but instead an express requirement of the statute itself. A claimant must comply with the time limitation requirements of the statute for the Commission to have jurisdiction regardless of whether the defendants assert untimeliness as a defense. It is not Respondents' burden to detail how Appellant has failed to comport with the statute, and Appellant cites no authority otherwise.

Regardless, Respondents properly pled that Appellant did not sustain a change of condition for the worse. Respondents asserted in their Pre-Hearing Brief that Appellant did not timely make an application for review of a change of condition. (Defs.' Form 58 Pre-Hr'g Br.) Respondents also specifically amended their Form 51 by way of the Pre-Hearing Brief and pled the defense that Appellant failed to request a hearing on a change of condition within one year. (Id.) Therefore, Appellant's assertion that Respondents did not raise this defense in their Form 51 is inaccurate.

Appellant cites S.C. Reg. 67-603 as support for his argument and combines subsection B and C to create the proposition that where the defendants fail to reply to each specification in the Form 50, the defendants forfeit the corresponding defenses. (Appellant's Initial Br. 16-17.) This is an inaccurate reading of the Regulation because subsection C specifically applies to defendants *failing* to file a Form 51. Reg. 67-603(C). The Regulation states that where no Form 51 is filed within the statutorily required

period, the defendants shall forfeit each special and affirmative defense. (Id.) Subsection C is inapplicable to the case at hand because Respondents timely filed a Form 51 denying Appellant met the requirements of a change of condition under S.C. Code Ann. §42-17-90, giving Appellant notice of the denial.

III. Estoppel does not apply to bar the Respondents' assertion that Appellant failed to comply with the twelve month statutory filing requirement contained in S.C. Code Ann. §42-17-90.

The South Carolina Court of Appeals described the elements of estoppel as being divided between the estopped party and the party claiming the estoppel. Kelley v. Kelley, 368 S.C. 602, 609, 629 S.E.2d 388, 392 (S.C. App., 2006) (citations omitted). For Appellant's estoppel argument to succeed, Appellant must prove "1) conduct which amounts to a false representation, or conduct calculated to convey the impression that the facts are otherwise, 2) the intention that such conduct shall be acted upon by the other party, and 3) knowledge of the true facts." Id.

Appellant argues Respondents should be estopped from asserting Appellant's hearing request was untimely because "there is simply no evidence in the Record of the Appellant being advised as to whether the claim was being accepted or whether it was being denied." (Appellant's Initial Br. 19 (emphasis removed).) Thus, by his own assertion, Appellant establishes estoppel does not apply in this matter because Respondents made no representation to Appellant on which he could justifiably rely in delaying his hearing application. Appellant cannot satisfy the elements for estoppel because Respondents gave Appellant no indication his claim was going to be accepted. Further, Respondents did not engage in conduct amounting to a misrepresentation or conduct calculated to convey the impression that the facts are otherwise. Additionally, Appellant cannot be said to have justifiably relied on the alleged silence of the

Respondents for nearly fifteen months as a representation that Respondents intended to accept the change of condition claim such that the Appellant would reasonably believe he need not request a hearing.

IV. The Commission has discretion as to whether to entertain motions for rehearing, and therefore, the Commission properly dismissed Appellant's Motion for Rehearing within their discretion.

The South Carolina Supreme Court recently held that S.C. Code Ann. §1-23-380(1) affords claimants the right to petition the Workers' Compensation Appellate Panel for a rehearing. Rhame v. Charleston County School Dist., 412 S.C. 273, 772 S.E.2d 159 (2015). The Court was presented with the issue of whether the Workers' Compensation Appellate Panel has the authority to entertain motions for rehearing. Id., 412 at 275, 772 at 160. The Court explained that the "plain and common sense interpretation [of §1-23-380(1)] envisions an expansive view of exhaustion of potential remedies before the agency and thus promotes judicial economy and avoids unnecessary appeals." Id., 412 at 277, 772 at 161. Therefore, the Supreme Court held in Rhame that the Appellate Panel of the Workers' Compensation Commission has the authority to entertain motions for rehearing. However, the Appellate Panel is not mandated to entertain such a motion for rehearing. Id. Appellant seems to confuse the discretionary authority granted to the Appellate Panel to rehear a case as a mandate to grant all motions for rehearing.

Appellant argued for rehearing on the basis that "review of the Commission Order will establish that the Commission did not address any of the specific legal issues and errors of law before it for review in its Full Commission Decision." (Claimant's Req. Reh'g 8.) On August 4, 2015, the Full Commission issued a Request for a Proposed Order giving full affirmation to the findings of the Single Commissioner, and

Respondents timely submitted the Proposed Order, which was then adopted, signed, and issued by the Commission. (Appellate Panel Order, Sept. 11, 2016.) The Workers' Compensation Commission properly acted within its authority to dismiss Appellant's petition for rehearing. A second review by the Appellate Panel of the sufficiency of its own procedures and its Findings that Appellant failed to timely exercise his rights would not have promoted judicial economy and prevented this appeal. Instead such rehearing on an issue of Appellant's neglect of his statutory rights would have been a misuse of the Commission's time.

Most importantly, the issue as to whether the Commission erred by not entertaining Appellant's Motion for Rehearing is moot as Appellant appealed this matter to this Court. There is no mandate that Appellant must be reheard by the Appellate Panel before appealing to the higher court. Rhame, 412 at 277, 772 at 161. Appellant was not prejudiced in any way, and in fact, if Appellant prevails on this Appeal the matter will be remanded back down to the Commission for adjudication in conformance with this Court's ruling. S.C. Code Ann. §1-23-380(5)(1976). This ground for Appellant's appeal has already been resolved through the filing of the Appeal itself.

CONCLUSION

S.C. Code Ann. §42-17-90 requires that a claimant make an "application" for review on a change of condition within twelve months from the date of payment of last compensation. The plain meaning of this statute and the word application means Appellant is required to make a request or petition of the Commission. Simply filing a notice of claim within twelve months of last payment of compensation does not satisfy

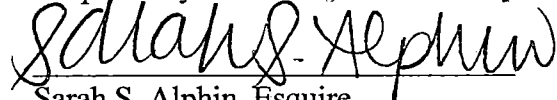
S.C. Code §42-17-90 as a notice of claim is neither an application, request, nor petition for the Commission to take any action.

It is undisputed that Appellant's last payment of compensation was November 28, 2012. Appellant did not make an application, by way of a hearing request, to the Commission for a change of condition until July 30, 2014. This hearing request was filed more than twelve months after last payment of compensation, and therefore, Appellant fails to satisfy the requirements of S.C. Code Ann. §42-17-90.

Respondents properly pled that Appellant did not sustain a change of condition for the worse. Respondents asserted in their Pre-Hearing Brief that Appellant did not timely make an application for review of a change of condition and specifically amended their Form 51 by way of the Pre-Hearing Brief to plead the same.

It is inherent that if the Claimant did not meet all the requirements set forth in the plain and clear language of §42-17-90, then he did not sustain a change of condition for the worse under the law. Accordingly, Respondents requests that this Court affirm the Workers' Compensation Commission Full Appellate Panel's September 11, 2015 Decision and Order.

Respectfully submitted,



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