

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

JUN 10 2016

APPEAL FROM CHARLESTON COUNTY
COURT OF COMMON PLEAS

SC Court of Appeals

Markley Dennis, Jr., Circuit Court Judge

Case No. 2015-001930

DARRELL EDWARDS,

Plaintiff/Appellant

v.

E. PAUL GIBSON, REISEN LAW FIRM, E.
PAUL GIBSON PC and JOHN DOES 1-5,

Respondants/Appellees.

MOTION TO REINSTATE APPEAL

Plaintiff/Appellant moves the Court, pursuant to Rule 260 of the South Carolina Rules of Appellate Procedure, to reinstate the above-captioned Appeal, for good cause, on the following grounds:

1. Plaintiff/Appellant timely filed an Initial Brief of Appellant on January 11, 2016, regarding the dismissal of his case against Defendants for malpractice. Plaintiff claims Defendants failed to timely file suit under the Longshore and Harbor Workers Claims Act ("LHWCA claim"). Defendants/Appellees argued and the lower court agreed that Plaintiff's claims were unsubstantiated and barred under the Act.
2. Defendants/Appellees timely filed an Initial Brief of Appellees on February 9, 2016. In their initial brief, Defendants/Appellees relied on an order by an Administrative Law

Judge (“ALJ”) denying benefits to Plaintiffs, in part for failing to timely notify the employer’s insurer of a third party settlement.

3. Plaintiff/Appellant timely filed a Reply Brief on February 19, 2016. The Reply Brief addressed a ruling by the Benefits Review Board of the U.S. Department of Labor, dated September 30, 2015, overturning the decision of the lower ALJ, denying benefits to Plaintiff. See *Edwards v. Signal Mutual Indemnity Association Ltd.*, BBR No. 15-0112.

4. Defendants’ experts relied on the ruling of the ALJ in their Motion for Summary Judgment, and the Court’s Order granting Summary Judgment relied on these Affidavits.

5. On March 4, 2016, Defendants/Appellees filed a Motion to Strike Plaintiff’s Reply Brief.

6. On March 10, 2016, the Benefits Review Board entered an Order on Motion for Reconsideration, which modified the September 30, 2015 in some respects but still remanded an issue central to this case to the ALJ.

7. On March 15, 2016, Defendants/Appellees filed a Petition to Supplement the Record, based in part on the recent rulings of the Benefits Review Board.

8. On March 28, 2016, Plaintiff/Appellant filed a Motion for Extension of Time to File Record on Appeal, requesting an additional thirty days to file the record. Plaintiff/Appellant filed the extension in part to obtain a ruling from the Court regarding the inclusion of two previous Orders from the Benefits Review Board that had not been considered by Defendants’ experts nor the lower court. Consequently, it was not part of the record but subject to Defendants/Appellees’ pending motion.

9. On April 1, 2016, the Clerk of Court of the South Carolina Court of Appeals issued a letter rejecting Defendants/Appellees’ “Initial Sur-Reply Brief of Respondents”. It did not rule

on Defendants/Appellees' Petition to Supplement the Record nor Plaintiff/Appellant's Motion for Extension of Time.

10. On April 4, 2016, Plaintiff/Appellant filed a Reply to Appellee's Motion to Strike Appellant's Reply Brief or in the alternative to File a Sur-Reply Brief and Reply to Respondent's Petition to Supplement the Record on Appeal.

11. To date, Plaintiff/Appellant is unaware of any ruling on this motion or the previous motions. Without such rulings, Plaintiff/Appellant could not discern whether to include the Orders from Benefits Review Board and awaited a response from the Court on the various pending motions.

12. On or about May 9, 2016, the Clerk of Court, acting *sua sponte*, entered an Order dismissing the case. Although the Order was purportedly mailed to undersigned counsel, counsel did not receive the Order.

13. On or about May 25, 2016, undersigned counsel received the Remittitur issued by the Court, notifying the lower court that the appeal had been dismissed. The Remittitur is the first notice undersigned counsel received regarding the dismissal of appeal.

14. Given the various pending motions and the uncertainty to include the Orders from the Benefits Review Board (in light of the Motion to Strike), Plaintiff/Appellant respectfully submits that there is "good cause" under Rule 260 of the South Carolina Rules of Appellate Procedure to Reinstate the Appeal.

15. Contemporaneously with filing this Motion for Reinstatement, Plaintiff/Appellant is submitting a Record on Appeal to the Court.

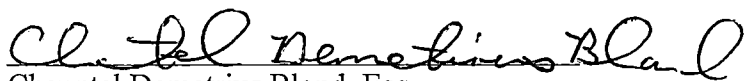
16. Plaintiff/Appellant asserts there is good cause for the reinstatement given the posture of the appeal and that Defendants/Appellees will not be prejudiced. *See Matute v. Baptist,*

391 S.C. 291, 705 S.E.2d 472 (S.C. App., 2011) (administrative appeal reinstated); *Limehouse v. Hulsey*, 397 S.C. 49, 723 S.E.2d 211 (S.C. App., 2011) (applying to S.C.R.C.P. 55(c), “good cause” is a less stringent standard than excusable neglect, serves the interests of justice and encompasses a degree of reasonableness) (citing *Sundown Operating Co. v. Intedge Indus. Inc.*, 383 S.C. 601, 607, 681 S.E.2d 885, 888 (2009) and *Richardson v. P.V., Inc.*, 383 S.C. 610, 618–19, 682 S.E.2d 263, 267 (2009)).

17. Plaintiff/Appellant has not been neglectful or dilatory throughout this appeal but has timely file briefs and responses when due. Plaintiff/Appellant submits that it was reasonable for counsel of the Plaintiff/Appellant to await direction from the court regarding the contents of the Record on Appeal. Specifically, both parties had moved the Court for an order to allow the Benefits Review Board orders to be included in the record. Plaintiff/Appellant did not want to include those Orders if the Court was going to strike the references within Plaintiff/Appellant’s initial brief.

18. Plaintiff/Appellant submits the interest of justice is preserved by the parties reaching the merits of the appeal, rather than an administrative dismissal.

This the 8th day of June, 2016.

By: 
Chauntel Demetrius Bland, Esq.
Bar No. 70150
463 Regency Park Drive
Columbia, SC 29210
Tel. (803) 319-6262
Fax. (866) 322-6815
chauntel.bland@yahoo.com
Attorney for Plaintiff/Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent via U.S.

Mail on this 8th day of June 2015, postage prepaid to

Carl E. Pierce, II
Pierce, Hems, Sloan & Wilson
The Blake House
321 East Bay Street
Charleston, SC 29401
P.O. Box 22437
Charleston, SC 29413
Tel. (843) 722-7733
Fax. (843) 722-7732
Attorney for Defendants/Respondants
E. Paul Gibson, Reisen Law Firm, E. Paul Gibson PC

RECEIVED

JUN 10 2016

SC Court of Appeals

By:

Chauntel Demetrius Bland

Chauntel Demetrius Bland, Esq.

Bar No. 70150

463 Regency Park Drive

Columbia, SC 29210

Tel. (803) 319-6262

Fax. (866) 322-6815

chauntel.bland@yahoo.com

Attorney for Plaintiff/Appellant

Chaunteal Demetrius Bland, Esquire
463 Regency Park Drive
Columbia, SC 29210



RECEIVED

JUN 10 2016

South Carolina Court of Appeals
SC Court of Appeals
1220 Senate Street
Columbia, SC 29201

This packaging is the property of the U.S. Postal Service® and is provided solely for use in sending Priority Mail® shipments. Misuse may be a violation of federal law. This packaging is not for resale. EP14F © U.S. Postal Service, July 2013; All rights reserved.

P

US POSTAGE AND FEES PAID
PRIORITY MAIL
Jun 08 2016
Mailed from ZIP 29063
PM Flat Rate Env



endicia.com

CommercialPlusPrice

071S00922575

PRIORITY MAIL 1-DAY

chauntel bland
463 regency park drive
Columbia SC 29210

0024

RECEIVED
JUN 10 2016

SC. Court of Appeals

SHIP TO:

South Carolina Court of Appeal
1220 SENATE ST
COLUMBIA SC 29201 - 3769

USPS TRACKING #



9405 5102 0088 3094 6701 53

FROM:

PRIORITY MAIL ★

DATE OF DELIVERY SPECIFIED*

USPS TRACKING™ INCLUDED*

INSURANCE INCLUDED*

PICKUP AVAILABLE

* Domestic only

IF USED INTERNATIONALLY,
CUSTOMS DECLARATION
LABEL MAY BE REQUIRED.



0000 10000 14

EP14F July 2013
OD: 12.5 x 9.5

VISIT US AT USPS.COM®
ORDER FREE SUPPLIES ONLINE

