

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM South Carolina
Workers Compensation Commission

Full Commission Order Dated December 19, 2013 affirming Commissioner Melody L. James
orders dated January 04, 2013 And September 30, 2013

Case No.: 2014-000186

John C. McDaniel.....Appellant,

v.

Snelling Staffing Services and United Wisconsin Insurance
Company c/o United Heartland Respondents.

**APPELLANT’S REPLY TO RESPONDENTS’ RETURN IN OPPOSITION
TO APPELLANT’S MOTION TO RECONSIDER**

PLEASE TAKE NOTICE the appellant hereby responds to Respondents’ Return In Opposition
To Appellant’s Motion To Reconsider as follows:

The appellant would first like to correct a misrepresentation by the Respondents,
”Appellant’s statement that he ‘fears’ he may obtain an adverse ruling from the Commission
does not constitute justification for this court to reconsider its Opinion and decide the hand-
picked substantive issues Appellant raises in his motion.”

Initially this argument seeks to misclassify the appellant’s reason for this motion. The
appellant does not fear “an adverse ruling” he fears (quoting motion to reconsider) “if the court
declines ruling on each of the due process issues presented above, the commission will conduct

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the remand hearing in largely the same manner and it may result in further violations of the Appellant's Civil Rights."

Additionally, the issues requested to be reconsidered are not as the respondents believe, "hand-picked substantive issues," but are procedural due process issues.

This court has already decided that the Commission violated the Appellants due process rights in not affording him proper notice. This motion just seeks to protect an injured and permanently handicapped worker from further Civil Rights Violations.

1. DID THE COMMISSION VIOLATE THE APPELLANTS RIGHT TO DUE PROCESS AND/OR THE RIGHT TO EQUAL PROTECTION BY FAILING TO ENFORCE SUBPOENAS?

The right to confront and cross examine witnesses is necessary for the Appellants due process rights to be fully protected. When the commission fails to enforce subpoenas both for record production and personal appearance then the rights of the appellant have been violated. How can an adequate opportunity to present evidence be preserved if not all relevant and material evidence is produced by the opposing party?

2. DID THE COMMISSION VIOLATE THE APPELLANTS RIGHT TO DUE PROCESS AND/OR THE RIGHT TO EQUAL PROTECTION BY FAILING TO ACCEPT APPELLANTS DEPOSITION AND ADDITIONAL RECORDS AT THE REMAND HEARING?

The remand hearing was granted after the admittance of Mr. Lampkin's pay records. This evidence contradicted the sworn testimony of Dan Cobb. It is within the commissioner's discretion to admit evidence. However, in stating that the commission had already ruled against

two motions to admit evidence and that those rulings restricted her from using her discretion to admit ANY evidence she illegally allocated her discretion. A lack of use of discretion is an abuse of that discretion. Not exercising her discretion to protect the rights of the injured worker to submit evidence amounts to a due process violation.

4. DID THE COMMISSION VIOLATE THE APPELLANTS RIGHT TO DUE PROCESS AND/OR THE RIGHT TO EQUAL PROTECTION IN FAILING TO RULE ON APPELLANT'S PROPOSED FINDINGS OF FACTS?

Respondents argue "claimant misreads Section § 1-23-350, which provides in pertinent part, '[i]f, in accordance with agency rules, a party submitted proposed findings of fact, the decision shall include a ruling upon each proposed finding.' S.C. Code Ann. § 1-23-350. The commission simply does not have any agency rules or regulations governing or allowing for each party to submit proposed findings of fact that the Commission then must respond to in detail.

Instead, the Commission has a long standing practice of issuing a detailed request for proposed order, such as the ones sent to claimants counsel, (R. 48-49), to staff attorney Roberts, (R. 50-51) and the request issued by the commission on October 31, 2013. (R. 52). In Such requests, the commission always reserves "the right to modify and or delete any or all portions of the submitted Decision and Order." (Id.)

Furthermore, Appellants suggestion would render workers' compensation proceedings uncontrollably unwieldy."

The Respondents argument here does not withstand any intellectual scrutiny. Apparently the Respondents believe that A) parties are not ALLOWED to submit proposed findings of fact in workers compensation matters because no rules or regulations specifically address how to B)

that the proposed order requests sent to claimant's former counsel (R. 48-49) and to staff attorney Roberts (R. 50-51) support the narrative that proposed findings of fact are NOT ALLOWED and C) that allowing parties to submit proposed findings would render SCWCC proceedings "uncontrollably unwieldy."

A) Parties are not ALLOWED to submit proposed findings of fact in workers compensation matters because no rules or regulations specifically address how to.

This assertion is simply not true. The Administrative Procedure Act clearly states "[i]f, in accordance with agency rules, a party submitted proposed findings of fact, the decision shall include a ruling upon each proposed finding." S.C. Code Ann. § 1-23-350. The term "shall" is a compulsion to act. The APA does not say that "if agency rules allow" or "if the agency has regulations addressing proposed findings of fact," it states "if in accordance with agency rules, a party submitted proposed findings of fact, the decision shall include a ruling upon each proposed finding." The Title 1 controls where it and Title 42 are in conflict and Title 42 controls where it and Chapter 67 are in conflict.

To assert that the appellant's right to have proposed findings adjudicated can be impugned by an agency's lack of specific regulations pertaining to the proposed findings of fact is absolutely false.

Simply put, the Respondents are misleading the court when they say "The commission simply does not have any agency rules or regulations governing or allowing for each party to submit proposed findings of fact."

B) That the proposed order sent to claimant's former counsel (R. 48-49) and to staff attorney Roberts (R. 50-51) support the narrative that proposed findings of fact are NOT ALLOWED.

This assertion is blatantly false. The proposed order requests directly instruct the parties to propose findings of fact, contradicting the position held by the Respondents.

The request for proposed order dated Dec. 3, 2012 (R. 48-49) states clearly on R.49 "Any other findings of fact not inconsistent with those attached hereto may also be proposed."

The request for proposed order dated Aug 6, 2013 (R. 50-51) states clearly on R.51 "Any other findings of fact not inconsistent with those attached may also be proposed."

The respondents argue that, "Instead [of allowing proposed findings of fact], the Commission has a long standing practice of issuing a detailed request for proposed order, such as the ones sent to claimants counsel, (R. 48-49), to staff attorney Roberts (R. 50-51),.."

When respondents present these documents as support for their narrative it is simply another attempt to mislead the court.

C) That allowing parties to submit proposed findings would render SCWCC proceedings "uncontrollably unwieldy."

This assertion is unsupported by rational thought. The Respondents would have this court believe that out of all the courts, tribunals and commissions that hold contested case hearings in the state of South Carolina under authority of Title 1, that the workers compensation commission would be the only one that would not have to comply with 1-23-350 due to the hearing becoming "uncontrollably unwieldy", to wit; that answering proposed findings of fact would be too much

work for the commission to undertake. This assertion casts the Commission in a negative light and should be rejected by this court.

In Summary, the law allows for proposed findings of fact, the law mandates a ruling be issued on each one that is proposed, the Commission has a long standing practice of issuing a detailed request for proposed order which contain instructions to propose findings, the appellant's properly proposed findings of fact were not ruled on and if every other judicial and quasi-judicial body in the state can rule on proposed findings of fact than so can the Workers Compensation Commission.

5. DID THE COMMISSION VIOLATE THE APPELLANTS RIGHT TO DUE PROCESS AND/OR THE RIGHT TO EQUAL PROTECTION IN FAILING TO ACCEPT APPELLANTS AMENDED FORM 30?

The respondents' argument is a non sequitur as the entire argument put forth by the Respondents is in reference to the amended form 30 being untimely filed and/or defective. Worker's Compensation commission did not find that the amended form 30 was not timely filed or that its filing was deficient. Nor were these points raised by the Respondents at the time of the hearing before the full commission. The order is clear "the amended form 30 was untimely served" and the onus of service in this case lies with the South Carolina Worker's Compensation commission pursuant to R.67-701 B. states for pro se claimants "the judicial department will prepare the additional copies of the Form 30 and serve the Form 30 on the opposing party."

As to respondents footnote #7, "While the commission has rules for amending a Form 50 or 52 request for a hearing, the form 51 Answer, and the pre-hearing brief, (see S.C. Code Ann.

67-609(B)(2), 67-610 & 67-611, respectively), there are no rules for amending a Form 30. (See S.C. Code Ann. 67-701-712).”

The Respondents wrongly assert that the form 30 may not be amended. The full commission hearing is based on a form 30 that is submitted pursuant to R. 67-701. Once the Form 30 has been submitted the regulations that control the Commission Appeal Review are R. 67-701 thru 67-712. Chapter 67 does not specifically state that a form 30 may be amended. However, a form 30 may be amended pursuant to R. 67-610, by way of R. 67-613, incorporated via refinance in R. 67-708.

R. 67-708(A) “A review hearing *may be postponed for the reasons in R. 67-613*”
(emphasis added)

R. 67-613(B)(4) “If the nature of the claim or relief requested changes, file a new hearing request according to R. 67-207 *unless R. 67-610 applies.*” (emphasis added)

R. 67-610(A) “After a Request for hearing and answer are filed with the commission, an “amended” form must be filed to indicate a change in the nature of the claim, relief requested, or another defense.”

Simply put, if an appeal is stayed while a remand hearing is heard, then once the remand hearing is adjudicated the appellant has the right to amend his request for a review hearing (form 30) if the relief requested changes. It is only rational that the issues contained in a request for a review hearing would change after a remand hearing was ruled upon.

In summary the commission grants remand hearings so rarely that they did not understand how to proceed after granting one. Respondents would have the court believe that once a form 30 is filed there is no way to amend it even after it becomes stale, arguing instead

that the appellant should have to carry on two or more avenues of appeal. Again, this does not pass the reasonable scrutiny test.

For the reasons Stated above, and to protect justice in the state of South Carolina, the appellant prays the court finds that a reconsideration of its order remanding to the South Carolina Workers Compensation Commission, and adds instructions that; the Appellant's ability to issue and enforce subpoenas for the hearing be granted, clarify the right of the Appellant to present evidence to the commission that is material and relevant, clarifying the right of the Appellant to have each proposed finding of fact individually ruled on, and clarifying that the form 30 that controls the remand hearing is the Amended form 30 presented in October of 2013 to the full commission by John McDaniel, the Appellant.



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Snelling Staffing Services and United Wisconsin Insurance
Company c/o United HeartlandRespondents.

PROOF OF SERVICE

I certify that I have served Appellant's Reply to Respondents' Return in Opposition to
Appellant's Motion to Reconsider by depositing a copy in the U.S. Mail, postage paid on July
19, 2016 addressed to the below:

Helen F. Hiser
R. Mark Davis
Allison Nussbaum

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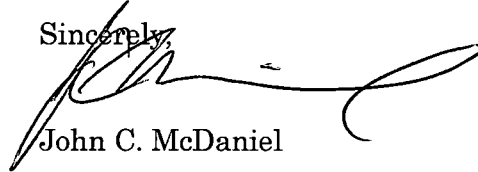
Jenny Abbott Kitchings
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RE: John C. McDaniel v. Career Employment Professional d/b/a Snelling Staffing
DOI: 11/21/2011
WCC File: 1116275
Appellant Case No: 2014-000186

Dear Ms. Kitchings,

ENCLOSED PLEASE FIND, one (1) original Reply to Respondents' Return in Opposition of Appellant's Motion to Reconsider, certificate of service and six (6) copies.

Sincerely,



John C. McDaniel

CC: McAngus, Goudlocke, and Curry

FROM:

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