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SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM SOUTH CAROLINA WORKER'S COMPENSATION COMMISSION

Full Appellate Panel

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Case No. 2016-000598

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Clarence B. Jenkins Jr,

Appellant,

v.

Amazon DEDC, LLC and  
American Zurich  
Insurance Carrier,

Respondents.

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[Initial] BRIEF OF APPELLANT

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Clarence B. Jenkins Jr,  
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- II. COMMISSIONER MICHAEL CAMPBELL II. WAS BIASED AND PREJUDICE AT MAY 21, 2015 HEARING, MAY 21, 2015 TRANSCRIPT, PP.3-19.
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10. AMAZON.COM DEDC, LLC AND AMERICAN ZURICH INSURANCE FAILED TO COMPLETE DEPOSITION ON NOVEMBER 10, 2014 WITH ASSIGNED WORKER'S COMPENSATION DOCTOR, DR. MAHMOUD ABU-ATA AS SCHEDULED MAY 21, 2015 TRANSCRIPT PP.3-19, P.110 LINES 1-18, DECEMBER 14, 2015 TRANSCRIPT P.8 LINES 21-24, P.10 LINES 22-25, EXHIBIT NOTIFICATION OF DEPOSITION FOR DR. MAHMOUD ABU-ATA, EXHIBIT S.C.42-9-440.

11. AMAZON.COM DEDC, LLC AND AMERICAN ZURICH INSURANCE ADMITTED IN THEIR MOTION TO SOUTH CAROLINA WORKER'S COMPENSATION FULL PANEL THAT SINGLE COMMISSIONER MICHAEL CAMPBELL II MADE AN ERROR WITH REGARDS TO R67-611 BUT CONSIDERED IT TO HARMLESS PERTAINING APPELLANT'S PERTINENT MEDICAL AND SUPPORTIVE DOCUMENTATIONS, DECEMBER 14, 2015 TRANSCRIPT, P.8 LINES 21-24, OBJECTIONS P.26 LINES 17-19, EXHIBIT RESPONDENTS' BRIEF TO FULL COMMISSION DATED NOVEMBER 11, 2015 PP.7-8.

#### STATEMENT OF THE CASE

On February 10, 2013, Clarence B. Jenkins Jr., Appellant sustain a work related injury to the head while working Amazon Fulfillment Center in, West Columbia, SC. Respondents has admitted that Appellant did sustain the work injury on February 10, 2013 and has accepted responsibility. Appellant has been diagnose with post syndrome concussion which has become disabling with other medical problems. Appellant was placed on a leave of absent from Amazon Fulfillment Center at least three times due injury, medical symptoms and medical documentations. Appellant was initial placed on a leave of absent by family medical physician, Dr. Sharon Eden due to post syndrome concussion from May, 2013 to August, 2013 and return to work with restrictions that which Amazon adhere too in August, 2013. Dr. Eden also made a referral to Orangeburg Neurology and Pain of Orangeburg, South Carolina because of concussion syndrome in June 6, 2013. I was approved to see Dr. Mahmoud Abu-Ata at Orangeburg Neurology and Pain Clinic by Amazon.Com DEDC, LLC and American Zurich Insurance because of post concussion syndrome which existed which is compensable, work related injury as in Shatto v. Mcleod Regional Medical Center, 406 S.C. 470, 753 S.E. 2d 416 (2013).

Dr. Mahmoud Abu-Ata of Orangeburg Neurology and Pain Clinic began providing medical care to Appellant because of post concussion syndrome. I saw Dr. Mahmud Abu-Ata at least five times from August, 2013 to October, 2014. Dr. Mahmoud Abu-Ata continued work restrictions in February 21, 2014 to avoid bright lights and loud noises. Amazon.Com DEDC.LLC and American Zurich Insurance provided work restrictions because of work injury from September 22, 2013 to February 9, 2014. Dr. Mahmoud Abu-Ata continued work restrictions in October 23, 2014. Dr. Mahmoud Abu-Ata, assigned worker's compensation doctor refused to provide a medical rating due to additional recommended medical evaluation referrals to a neuro surgeon, neuro psychologist and spine specialist because repetitive trauma which is compensable under South Carolina Worker's Compensation Commission Act because Appellant has not work and received medical care under South Carolina Worker's Compensation Commission Act. As in Ralph Duane King Jr, v. International Knife and Saw-Florence, 395 S.C. 437, 718 S.E. 2d 227 (Ct. App. 2011).

I received an email from Michele Doyle of Amazon.Com DEDC, LLC Human Resources Office not allowing access to worksite because work restrictions due work injury on February 10, 2013 therefore substantial evidence existed as in *Burnett v. City of Greenville* 400 S.C. 417, 737 S.E. 2d 200 (2012). I was already working at Amazon.Com DEDC, LLC on work restrictions until being placed on leave by Michele Doyle of Amazon.Com DEDC, LLC Human Resources. Dr. Mahmoud Abu-Ata did not placed me put of work but Amazon.Com DEDC,LLC Human resources Office. Amazon.Com DEDC, LLC paid additional disability benefits which is verified by paystubs. I was denied short-term disability benefits even though medical documentations from Dr. Mahmoud Abu-Ata confirming medical symptoms which were ignored. I applied for long-term disability compensation and received benefits payment from July, 2014 to January, 2015. I have not receive additional worker's compensation or disability benefits since January, 2015.

Appellant provides Amazon.Com DEDC, LLC and American Zurich Insurance with medical status even though worker's compensation benefits are not being paid and suitable employment have not been provided. Appellant has been evaluated and treated by several doctors therefore documented for several years that concluded that symptoms of a post concussion syndrome as long-term and repetitive trauma requiring additional medical care and medication as in *Ralph Duane King Jr, v. International Knife and Saw-Florence*, 395 S.C. 437, 718, S.E. 2d 227 (Ct. App. 2011).

#### STATEMENT OF FACT

Appellant received a work injury to the head on February 10, 2013 at Amazon.Com Fulfillment Center in West Columbia, South Carolina. Appellant sustained a post concussion syndrome as documented by several doctors which has been disregarded by Amazon.Com DEDC, LLC and American Zurich Insurance. Amazon.Com DEDC, LLC and American Zurich Insurance has been provided all medical records through subpoenas and provided by Appellant. South Carolina Worker's Compensation Commission violated their own policy of R67-611 and the requirement of Form 14B. Exhibit R67-611, Exhibit South Carolina Worker's Compensation Commission Regulatory Advisory dated January 25, 2012.

Former Commissioner Andrea C. Roche as a Finding of Fact, P.3 in her Decision and Order dated May 27, 2014 that Claimant has received medical evaluation and/or treatment by HealthWorks, Dr. Abu-Ata and Dr. Jervey. Defendants have furnished and authorized medical evaluation and/or treatment by HealthWorkss, Dr. Abu-Ata and Dr. Jervey. South Carolina Worker's Compensation Appellate Panel in their

**Decision and Order dated November 18, 2014 as a Finding of Fact, P.3 that Claimant has received medical evaluation and/or treatment by HealthWorks, Dr. Abu-Ata and Dr. Jervey. Defendants have furnished and authorized medical evaluation and/or treatment by HealthWorks, Dr. Abua-Ata and Dr.Jervey.**

#### **ARGUMENT**

1. **RESPONDENTS HAS ADMITTED TO WORK INJURY OF, MAY 21, 2015 TRANSCRIPT. PP.3-19, DECEMBER 14, 2015 TRANSCRIPT, P.6 LINES 11-25, EXHIBIT S.C. 42-1-160 (A), S.C. 42-9-10 (A,C).**
2. **SINGLE COMMISSIONER MICHAEL CAMPBELL II. AND SOUTH CAROLINA WORKER'S COMPENSATION FULL APPELLATE PANEL OF DECEMBER 14, 2015 ERRED BY ISSUING AN ORDER AND DECISION DENYING FURTHER MEDICAL CARE AND COMPENSATION BECAUSE FORMER COMMISSIONER ANDREA C. ROCHE ON MAY 27, 2014 AND SOUTH CAROLINA WORKER'S COMPENSATION FULL APPELLATE PANEL ON NOVEMBER 18, 2014 HAD ALREADY AFFIRMED THAT DR. MAHMOUD ABU-ATA WAS APPROVED TO EVALUATE AND /OR TREATMENT TO CLAIMANT THEREFORE HAVING NOT OBTAIN A MEDICAL RATING OR A MEDICAL RELEASE FROM DR. MAHMOUD ABU-ATA VIOLATED MY RIGHTS UNDER SOUTH CAROLINA WORKER'S COMPENSATION ACT, DECEMBER 14, 2015 TRANSCRIPT, OBJECTIONS P.26 LINES 17-19, DECISION AND ORDER DATED MAY 27, 2014 AND DECISION AND ORDER DATED NOVEMBER 18, 2014.**
3. **APPELLANT HAS NOT REACHED MAXIMUM MEDICAL IMPROVEMENT ON OCTOBER 23, 2013 AS STATED BY RESPONDENTS BECAUSE ASSIGNED WORKER'S COMPENSATION DOCTOR, DR. MAHMOUD ABU-ATA HAS NOT RELEASED CLAIMANT, MAY 21, 2015 TRANSCRIPT P.3 LINES 13-21, P.110 LINE 18. DECEMBER 14, 2015, TRANSCRIPT P.7 LINES 10-25, P. 8 LINES 1-15, P.8 LINES 21-24, P.99 LINES 1-3, OBJECTIONS P.7 LINES 1-25, OBJECTIONS P.6 LINES 13-25, EXHIBIT DISABILITY PAYMENTS FROM AMAZON.COM DEDC,LLC DATED MARCH, 2014 TO APRIL, 2014, EXHIBIT FMLA FORM BY DR. MAHMOUD ABU-ATA DATED MARCH 9,2014, EXHIBIT SOUTH CAROLINA WORKER'S COMPENSATION REGULATORY ADVISORY DATED JANUARY 25, 2012, EXHIBIT 42-9-440.**

4. DR. MAHMOUD ABU-ATA, ASSIGNED WORKER'S COMPENSATION DOCTOR HAS REFUSED TO PROVIDE A MEDICAL RATING, PHYSICIAN STATEMENT AND A RELEASE MAY 21, 2015 TRANSCRIPT, P.4 LINES 16-25, P.110 LINE 18, DECEMBER 14, 2015 TRANSCRIPT P.5 LINES 1-10, P.6 LINES 13-15, P.8 LINES 21-24, OBJECTIONS P.6 LINES 13-25, OBJECTIONS P.7 LINES 1-25, OBJECTIONS P.26 LINES 17-19, EXHIBIT SOUTH CAROLINA WORKER'S COMPENSATION REGULATORY ADVISORY DATED JANUARY 25, 2012, EXHIBIT S.C. 42-1-160 (A), S.C. 42-9-10 (A,C).
5. DR. MAHMOUD ABU-ATA HAS REFUSED TO COMPLETE FORM 14B BECAUSE OF MEDICAL SYMPTOMS FROM POST CONCUSSION SUSTAIN FROM WORK INJURY ON FEBRUARY 10, 2013 AS REQUIRED BY SOUTH CAROLINA WORKER'S COMPENSATION COMMISSION WHEN AN EMPLOYER STATES MAXIMUM MEDICAL IMPROVEMENT, MAY 21, 2015 TRANSCRIPT P.3 LINE 13-21, P.110 LINE 18, DECEMBER 14, 2015 TRANSCRIPT P.8 LINES 21-24, OBJECTIONS P.6 LINES 13-25, OBJECTIONS P.7 LINES 1-25, EXHIBIT SOUTH CAROLINA WORKER'S COMPENSATION COMMISSION REGULATORY ADVISORY DATED JANUARY 25, 2012, EXHIBIT S.C. 42-9-440.
6. COMMISSIONER MICHAEL CAMPBELL II MADE AN EGREGIOUS ERROR REGARDING SOUTH CAROLINA WORKER'S COMPENSATION COMMISSION LAW R67-611 AT MAY 21, 2015 HEARING WHEN HE REFUSED TO ALLOW APPELLANT TO ENTER PERTINENT MEDICAL RECORDS AND SUPPORTIVE DOCUMENTATIONS PERTAINING TO WORK INJURY CLAIM STATING THAT A PRO-SE HAD TO FILED A PRE-LEGAL BRIEF WHICH IS INCORRECT INTERPRETATION OF THE LAW, MAY 21, 2015 TRANSCRIPT, P.4 LINES 1-25, P.5 LINES 1-25, P.70 LINES 15-22, P.88 LINES 21-25, OBJECTIONS P.70 LINE 23, OBJECTIONS P.89 LINES 3-13, OBJECTIONS P.99 LINES 4-14, OBJECTIONS P.99 LINES 10-11, DECEMBER 14, 2015, TRANSCRIPT P.8 LINES 21-24, P.13 LINES 1-5, P.13 LINES 23-24, P.14 LINES 1-5, OBJECTIONS P.6 LINES 13-25, OBJECTIONS P.7 LINES 1-25, OBJECTIONS P.26 LINES 17-19, EXHIBIT R67-611 LAW.
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9. AMAZON.COM DEDC, LLC AND AMERICAN ZURICH INSURANCE HAS STATED NO WORKER'S BENEFITS SINCE THE INITIAL CLAIM WHICH CAN BE DISPUTED TO DISABILITY PAYMENTS FROM LIBERTY MUTUAL INSURANCE AND AETNA INSURANCE, MAY 21, 2015 TRANSCRIPT, PP. 3-19, DECEMBER 14, 2015 P.8 LINES 21-24, EXHIBIT AMAZON DISABILITY PAYMENTS FROM FEBRUARY, 2014, EXHIBITS 42-1-160(A), S.C 42-9-10 (A,C), S.C. 42-9-440
10. AMAZON.COM DEDC, LLC AND AMERICAN ZURICH THROUGH LEGAL COUNSEL, RUSSELL J. GOUDELOCK AFFIRMING THE NON-PAYMENT OF WORKER'S COMPENSATION BENEFITS THROUGH AN EMAIL DATED APRIL 24, 2014, 2014, MAY 21, 2015 TRANSCRIPT PP.3-19, DECEMBER 14, 2015 TRANSCRIPT, P.8 LINES 21-24, OBJECTIONS P.6 LINES 13-25, OBJECTIONS P.7 LINES 1-25, OBJECTIONS P.26 LINES 17-19, EXHIBIT DATED APRIL 24, 2014, EXHIBITS S.C. 42-1-160(A), S.C. 42-9-10 (A,C).
11. COMMISSIONER MICHAEL CAMPBELL II. WAS BIASED AND PREJUDICE AT MAY 21, 2015 HEARING BECAUSE APPELLANT WAS HELD TO A DIFFERENT SET OF STANDARDS WHICH WAS A DISADVANTAGE COMPARED TO RESPONDENT'S DEFENSE ON MAY 21, 2015 TRANSCRIPT PP.3-19, P.70 LINES 17-22, P.99 LINES 1-14, P.107 LINES 1-14, P.110 LINE 18, P.111 LINES 4-7, OBJECTIONS P.70 LINE 23,

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- 12. SOUTH CAROLINA WORKER'S COMPENSATION FULL APPELLATE PANEL WAS BIASED AND PREJUDICE AT DECEMBER 14, 2015 HEARING BECAUSE IT NEVER ACCEPTED VIOLATION R67-611 OF SOUTH CAROLINA WORKER'S COMPENSATION COMMISSION LAW DECEMBER 14, 2015 TRANSCRIPT, P.7 LINES 10-25, P.8 LINES 21-24, P. 9 LINES 5-20, P.10 LINES 5-10, P.13 LINES 1-5, P.14 LINES 1-25, P.15 LINES 1-25, P.16 LINES 1-22, P.17, LINES 1-25, P.18 LINES 1-18, P.19 LINES 1-25, P.20 LINES 1-21, P.23 LINES 10-25, P.24 LINES 1-15, P.25 LINES 4-25, P.26 LINES 1-8, OBJECTIONS P.11 LINES 4-9, OBJECTIONS P.11 LINES 24-25, EXHIBIT R67-611.**
- 13. AMAZON.COM DEDC, LLC AND AMERICAN ZURICH INSURANCE PROVIDED NOTIFICATION THAT DEPOSITION WITH ASSIGNED WORKER'S COMPENSATION DOCTOR, DR. MAHMOUD ABU-ATA WAS SCHEDULED AND CONFIRMED FOR NOVEMBER 10, 2014 WHICH NEVER TOOK PLACE, MAY 21, 2015 TRANSCRIPT, P.3-19, P.110 LINES 18, DECEMBER 14, 2015 TRANSCRIPT, P.8 LINES 21-24, OBJECTIONS P.6 LINES 13-25, OBJECTIONS P.7 LINES 1-25, EXHIBIT NOTIFICATION OF DR. MAHMOUD ABU-ATA DEPOSITION DATED NOVEMBER 10,2014.**
- 14. AMAZON.COM DEDC, LLC AND AMERICAN ZURICH INSURANCE PROVIDED MEDICAL CARE PAST THE MAXIMUM MEDICAL IMPROVEMENT DATE OF OCTOBER 23, 2013 DUE THE ASSIGNING WORKER'S COMPENSATION NURSE, KELLY WELLS THAT ATTENDED MEDICAL APPOINTMENTS WITH DR. MAHMOUD ABU-ATA ON FEBRUARY 21, 2014 AND JUNE 20, 2014, MAY 21, 2015 TRANSCRIPT PP. 3-19, 2014, P.112 LINES 1-14. OBJECTIONS P.6 LINES 13-25, OBJECTIONS P.7 LINES 1-25, EXHIBIT LETTER FROM NURSE KELLY WELLS DATED JUNE 9, EXHIBITS S.C. 42-1-160 (A), S.C. 42-9-10 (A,C), S.C. 42-9-440.**
- 15. NURSE, KELLY WELLS ATTENDED MEDICAL APPOINTMENT WITH DR. STICKLER ON AUGUST 13, 2014 AND AUGUST 20, 2014 WHICH IS AFTER**

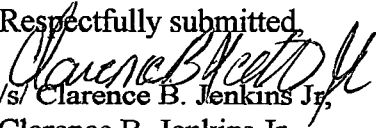
THE AMAZON.COM DEDC, LLC AND AMERICAN ZURICH INSURANCE CLAIMED OF MAXIMUM MEDICAL IMPROVEMENT OF OCTOBER 23, 2013, MAY 21, 2015 TRANSCRIPT P.95 LINES 3-22, P.99 LINES 15-25, P.112 LINES 1-14. DECEMBER 14, 2015, TRANSCRIPT P.8 LINES 21-24, OBJECTIONS P.6 LINES 13-25, OBJECTIONS P.7 LINES 1-25, OBJECTIONS P.26 LINES 17-19, EXHIBITS S.C.42-1-160 (A), S.C. 42-9-10 (A,C), S.C. 42-9-440.

16. SOUTH CAROLINA WORKER'S COMPENSATION COMMISSION HAS RECEIVED EXTENSIVE MEDICAL TRAINING PERTAINING TO EFFECTS OF HEAD INJURIES WHICH CONFIRMS APPELLANT CURRENT AND PAST MEDICAL SYMPTOMS THEREFORE SHOWS A NEGLIGENCE TO BE RULED IN FAVOR OF RESPONDENTS, MAY 21, 2015 TRANSCRIPT PP, 3-19, P.107 LINES 1-10, OBJECTIONS P.107 LINES 11-12.
17. SINGLE COMMISSIONER MICHAEL CAMPBELL II AND SOUTH CAROLINA WORKER'S COMPENSATION FULL APPELLATE PANEL ERR WITH REGARDS TO R67-612 BECAUSE CLAIMANT PROVIDED NO EXPERT OPINION AT MAY 21, 2015 HEARING. DECEMBER 14, 2015 TRANSCRIPT, P.8 LINES 21-24, P.19 LINES 6 -16, OBJECTIONS P.19 LINES 20-25, OBJECTIONS P.20 LINES 1-7, OBJECTIONS P.26 LINES 17-19.

#### CONCLUSION

For the reasons stated, this Court should reverse the judgment of the circuit court.

August 25, 2016

Respectfully submitted,  
  
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PROOF OF SERVICE

I certify that I have served the Initial Brief and Designation of Matter on South Carolina Worker's Compensation Commission by depositing a copy of it in the United States Mail, postage prepaid, on August 25, 2016, addressed to their attorney of record, Attorney Keith Roberts, P.O. Box 1715 Columbia, South Carolina 29202-1715.

August 25, 2016

  
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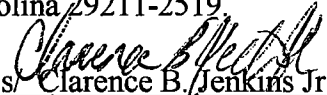
Amazon.Com DEDC, LLC  
and American Zurich  
Insurance,

Respondents.

PROOF OF SERVICE

I certify that I have served the Initial Brief and Designation of Matter on Amazon.Com DEDC, LLC and American Zurich Insurance by depositing a copy of it in the United States Mail, postage prepaid, on August 25, 2016, addressed to their attorney of record, Attorney, J. Russell Goudelock and Attorney, Helen F. Hiser, P.O. Box 12519 Columbia, South Carolina 29211-2519.

August 25, 2016

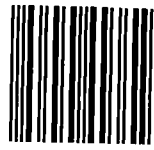
  
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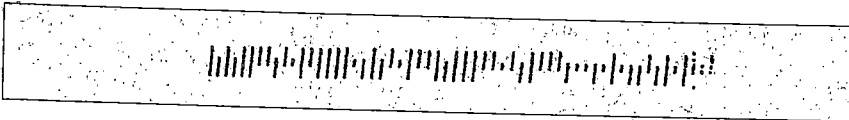


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