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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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AUG 31 2016

SC Court of Appeals

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

W.C.C. File No.: 1303989

Clarence B. Jenkins, Employee, Appellant,

v.

Amazon.Com DEDC, LLC, Employer, and
Zurich Ins. Co., Carrier, Respondents.

**SECOND MOTION FOR CORRECTION OF
AND/OR TO STRIKE ITEMS FROM
APPELLANT'S DESIGNATION OF MATTER
AND INITIAL BRIEF**

Pursuant to Rules 208, 209, 210 and 240, SCACR, Respondents Amazon.Com DEDC, LLC and Zurich Ins. Co. move this Court to order that Appellant's revised Designation of Matter to be Included in the Record on Appeal ("Revised Designation"), dated August 24, 2016, be corrected and/or that items be stricken as described below. Appellant has failed to comply with this Court's August 11, 2016 Order, which instructed him to "serve and file (1) an amended designation of matter that designates matters with specificity, including any applicable dates, and also only designates matters that were actually presented to the lower court pursuant to Rule 210(c), SCACR," and an amended initial brief that complies with Rule 208(b)(4), SCACR. Appellant's Revised Designation contains many of the same non-record materials as his first Designation and, in addition, contains numerous additional non-record items, all in violation of this Court's

August 11, 2016 Order. Furthermore, Appellant's revised [Initial] BRIEF OF APPELLANT ("Revised Initial Brief") continues to rely, in part, on non-record material.

As noted previously, it is well-established that appellate review of a Commission decision is confined to the record before the Commission. S.C. Code Ann. § 1-23-380(4) ("[t]he review must be conducted by the court and must be confined to the record"); *see also Terry v. South Carolina Dept. of Health & Env'l Control*, 377 S.C. 569, 574, 660 S.E.2d 291, 294 (Ct. App. 2008) (appellate review of agency decisions "is confined to the record ..."). "This Court's review is restricted to the evidence considered by the appellate panel in reaching its decision," and may not rely on evidence not considered by the Commission. *Martin v. Rapid Plumbing*, 369 S.C. 278, 288, 631 S.E.2d 547, 553 (Ct. App. 2006).

Here, a number of Appellant's designations continue to violate Rules 209(a)&(b), SCACR, which provide that designated items are to be described "with specificity" and that "[t]he Designation may only propose to include portions of the transcript, pleadings, orders, exhibits, or other materials which may be properly included in the Record on Appeal [See Rule 210(c)]." Rule 210(c) SCACR, in turn, provides that "[t]he Record shall not ... include matter which was not presented to the lower court or tribunal."

First, Appellant continues to designate materials that were not part of the record below – even adding additional non-record items to his Revised Designation – all of which must be stricken. Non-record items designed by Appellant include:

- #15. "A reminder letter from Assigned Nurse Kelly Wells dated June 9, 2014 assigned by Amazon.Com DEDC, LLC regarding June 20, 2014 medical appointment with Dr. Mahmoud Abu-Ata, May 21, 2015" (*this item was #13 on Appellant's initial Designation*);

- #17. "Medical Records from Dr. Sharon Eden, Dr. Tomachio, Dr. Tonia Gantt and Dr. Gonzalez of Norfield Medical center regarding Claimant's Medical Condition on form 50 dated February 25, 2015"¹;
- #18. "Documentations from Amazon.Com DEDC, LLC Human Resources (Michelle Doyle) placing Claimant on a leave because of medical condition/restrictions dated August 14, 2013, May 21, 2015 Transcript" (*this item was #15 on Appellant's initial Designation*)²;
- #19. "Medical Records by Dr. Paysinger, Dr. Stickler and Dr. Jervey on form 50 dated February 25, 2015"¹;
- #21. "A letter from Amazon.Com DEDC, LLC Legal Representation, Attorney Elizabeth Render confirming an appointment with Dr. Charles Jervey dated November 4, 2013 stated on form 50 filed February 25, 2015" (*this item was #18 on Appellant's initial Designation*)³;
- #22. "A Health care Provider Certificate for FMLA completed by Dr. Mahmoud Abu-Ata, assigned worker's [sic] compensation doctor regarding claimant medical condition a/restrictions dated March 9, 2014" (*this item was #19 on Appellant's initial Designation*);
- #26 "Short-Term and Long-Term Disability Payments from Liberty Mutual Insurance, May 21, 2015 Transcript" (*this item was #21 on Appellant's initial Designation, and still fails to provide dates*)²;
- #31. "A letter from Phadrea Butler, Amazon former employee dated May 18, 2015, May 21, 2015 Transcript"²;
- #32. "Received a letter from Regina Mohammed mailed November 12, 2013 as witness account to claimant physical condition, an Amazon former employee, May 21, 2015 Transcript"²;
- #33. "Disability Payments from Amazon.Com DEDC, LLC dated March, 2014 to April, 2014";
- #34. "Long-Term Disability Payments form Aetna Insurance, May 21, 2015 Transcript" (*this item was #22 on Appellant's initial Designation, and still fails to provide dates*)²;

¹ Respondents note that these medical records are not identified by date and, in addition, were not attached to Appellant's February 25, 2015 Form 50. (Att. E).

² Simply referring to the May 21, 2015 Transcript does not cure the fact that these items were never admitted before the Commission. Although a few documents were introduced into the Record at the hearing; however, this designation was not among them.

³ This letter was not attached to Appellant's February 25, 2015 Form 50. (Att. E).

- #35. "An email from Attorney, Russell J. Goude-lock on April 24, 2014 stating Claimant will not receive worker's compensation benefits; May 21, 2015 Transcript" (*this item was #24 on Appellant's initial Designation*)⁴;
- #36. "A letter from Amazon.Com DEDC, LLC requesting a RMI because of work injury and disability dated August 14, 2013, May 21, 2015 Transcript"⁴;
- #37. "An email to Legal Counsel, Elizabeth Render dated September 23, 2013 regarding neglect of Amazon.Com DEDC, LLC and Sedgwick to provide medical care from Dr. Mahmoud Abu-Ata";
- #38. "An email from Attorney Russell J. Goude-lock on July 11, 2014 potentially scheduling another appointment other than Dr. Mahmoud Abu-Ata, May 21, 2015 Transcript"⁴;
- #40. "Exhibit from South Carolina Worker's [sic] Compensation Commission Traumatic Brain Injury Training dated May 2, 2014"; and
- #41. "Exhibit from South Carolina Brain Injury Leadership Council dated April 22, 2014".

This Court should order Appellant to remove these items from his Designation. They were never admitted before the Commission as part of the record below and, as a result, cannot be included in the Record on Appeal.

Second, four of Appellant's designations make no sense as designations to the Record on Appeal and, instead, appear to be substantive argument on the part of Appellant. These include:

- #27. "Claimant acknowledge that court was being bias and prejudice towards Amazon. Come [sic] DEDC, LLC and American Zurich Insurance, May 21, 2015 Transcript";
- #28. "Claimant expressed his concerns to the court of a different standards applied to Amazon,Com [sic] DEDC, LLC and American Zurich Insurance, May 21, 2015 Transcript pp. 3-19; p. 89";

⁴ Simply referring to the May 21, 2015 Transcript does not cure the fact that these items were never admitted before the Commission. Although a few documents were introduced into the Record at the hearing; however, this designation was not among them.

#29. “Commissioner Campbell II stated on p. 108 lines 18-21, that South Worker’s [sic] Compensation had all records because of subpoenas, May 21, 2015 Transcript”; and,

#30. “Claimant asked the court where are all records since South Carolina Worker’s [sic] Compensation Commission had been made aware to dispute records and bias of the court; May 21, 2015 Transcript”.

This Court should order Appellant to remove these items from his Designation, as they are not properly included in the Record on Appeal.

Third, Respondents seek clarification that Appellant’s Designation #5 intends to designate the “South Carolina Worker’s [sic] Compensation Commissioner *Request for Proposed Order of May 26, 2015,*” and that his Designation #9 intends to designate the “Respondents’ Motion to *Exclude* Appellant’s Exhibits To The Form 30 dated September 24, 2015 p. 2.”⁵ If the italicized language is what Appellant intends to designate, Respondents have no objection. Respondents request that Appellant be ordered to confirm whether the documents he seeks to designate are the above-referenced “*Request for Proposed Order*” and “*Motion to Exclude* Appellant’s Exhibits.”

Fourth, Appellant’s Revised Initial Brief fails to comply with this Court’s Order in that he continues to cite to non-record items, which references must be stricken from his brief. Specifically:

- on page 5, in Argument 3, Appellant cites to “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 [sic]

⁵ Italicized language added by Respondent.

COMPENSATION REGULATORY ADVISORY DATED JANUARY 25, 2012”;

- on page 7, Argument 8, Appellant cites to “EXHIBIT DISABILITY PAYMENTS FROM LIBERTY MUTUAL DATED MAY, 2013 TO NOVEMBER, 2013, EXHIBIT DISABILITY PAYMENTS FROM AETNA INSURANCE DATED JULY, 2014 TO JANUARY, 2015. EXHIBIT DISABILITY PAYMENTS FROM AMAZON DATED FEBRUARY, 2014 TO MARCH, 2014”;
- on page 7, Argument 9, Appellate cites to “EXHIBIT AMAZON DISABILITY PAYMENTS FROM FEBRUARY, 2014”;
- on page 7, Argument 10, Appellant cites to “EXHIBIT DATED APRIL 24, 2014”; and,
- on page 8, Argument 14, Appellant cites to “EXHIBIT LETTER FROM NURSE KELLY WELLS DATED JUNE 9.”

In each instance, Appellant also has cited other portions of the record below to support his arguments. Rather than requiring him to completely re-write his brief again, this Court should order him simply to remove the references to non-record material identified herein.

Finally, Respondents request that the briefing schedule, including the deadline for filing their Initial Brief and Designation of Matter, be stayed until the Court decides this Motion.

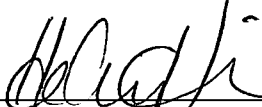
CONCLUSION

For the reasons stated herein, Respondents move this Court to strike all non-record material from Appellant’s Revised Designation and Revised Initial Brief, and to

clarify certain designations as requested herein. Respondents also request that the briefing schedule be stayed while the Court considers this Motion.

McANGUS GOUDELICK & COURIE, LLC

August 30, 2016



Helen F. Hiser, S.C. Bar No. 76124
735 Johnnie Dodds Blvd., Suite 200 (29464)
P.O. Box 650007
Mount Pleasant, South Carolina 29465
(843) 576-2900

*Attorneys for Respondents Amazon.Com DEDC,
LLC and Zurich Ins. Co.*

Attachment E



Claimant's Name: Clarence B. Jenkins Jr SSN: 248-41-1391 Employer's Name: Amazon Com dede, LLC
 Address: 945 Wire Rd Address: 7200 Discovery Drive
 City: Neeses State: SC Zip: 29107 City: Chattanooga State: TN Zip: 37421
 Home Phone: 8032634514 Work Phone: 803791-6542 Insurance Carrier: Insurloc company state of Pennsylvania
 Preparer's Name: Clarence B. Jenkins Jr Law Firm: NA Preparer's Phone #: 803263-4514
 Insurance Carrier: Clo Segwick Management Service

A claim for workers' compensation benefits is made based on the following grounds: _____ Date of Injury or Illness: 2-10-2013

- Injury Illness Repetitive Trauma Occupational Disease Physical Brain Injury Concurrent Jurisdiction
- The claimant sustained an injury to head (Part(s) of Body Injured) on 2-10-13 (Month/Day/Year) in Lexington county, state of SC.
 - Body part(s) affected are: head, eyes, neck, legs and feet.
 - Briefly describe how the accident occurred: Bending over to pick an item and hit forehead on metal table
 - Both the claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of injury.
 - The relationship of employer and employee existed at the time of injury. yes
 - At the time of the injury the claimant was performing services arising out of and in the course of employment. yes
 - Notice of the accidental injury was given to the Employer on 2-10-13 (Month/Day/Year) in the following manner: Reported to supervisor Mike Semina who took me to a care for treatment and filed a report

Due to injury, the claimant is in need of (check one):
 (a) medical examination and treatment for: _____
 (b) additional medical examination and treatment for: head, eyes, neck, arm, legs, feet because of nerve damage

Due to injury, the claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of:
4-22-2013 to 9-23-2013 and 01-22-2014 to present

Due to the injury, the Claimant has permanent disability of the following nature and extent (check one):
 (1) General Disability: Total Partial (2) Specific Disability: Total Partial (3) Wage Loss

9a. A determination of permanent disability is premature at this time.

Due to the injury, the Claimant has a serious bodily disfigurement consisting of:
Abulging disc in several locations in neck and spine that has caused nerve damage

10a. At the time of the injury, the Claimant was paid weekly wages of \$500.00 and demands accounting of days worked and wages earned as provided by law.

10b. Give names and addresses of all employers for whom the Claimant has worked since the date of the accident:
Amazon 4400 12th West Columbia, SC 29172

11. Further grounds or unusual aspects of claim: Amazon and Segwick has refused to allow medical treatments as recommended by Dr. Otto and others - See attachment

11a. List names and addresses of all physicians or other medical specialists who have seen or treated the Claimant as a result of the accident:
Dr. Otto, Orangeburg, SC / Dr. Eden, Norway, SC / Dr. Tomarchio, Norway, SC; See Attachment

11b. To the best of your knowledge, did you have any prior permanent disability? NO
 If yes, describe: _____

12. Appropriate benefits as provided in the Act for the above grounds and other relief as the Workers' Compensation Commission may direct as just and proper.

13a. I am filing a claim. I am not requesting a hearing at this time. 14. Estimated time needed for hearing: 2 hours

13b. I am requesting a hearing. A \$25 fee is required.

Mediation
 a. Mediation is requested to be ordered pursuant to Reg. 67-1801 B.
 b. Mediation is required pursuant to Reg. 67-1802.
 c. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.
 d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.

Questions regarding mediation may be submitted to mediation@wcc.sc.gov.

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to SC Worker's Compensation Commission
 address: PO Box 1715 Columbia, SC 29202-1715 on the 25th day of 2 2015 by first class postage certified mail personal service.

I verify the contents of this form are accurate and true to the best of my knowledge.
Clarence B. Jenkins Jr Plaintiff upscale81@yahoo.com 2-25-2015
 Preparer's Signature Title Email Date

Questions about the use of this form should be directed to the Claims Department at 803.737.5723. Refer to Regulations 67-204 through 67-211 and Regulations 7-601 through 67-615 as well as Reg. 67-1801.

Attachment
Additional Comments

Question 11: Amazon and Sedgwick recently subpoena records from unauthorized medical visits as of 2/2015 even though they have went before SC Worker's Compensation Commission on two occasion to address this. SC Worker's Commission agreed with Amazon and Sedgwick regarding unauthorized therefore has allowed them to not accept responsibility and I was denied mileage. By Amazon and Sedgwick subpoena unauthorized medical records after SC Worker's Compensation Commission ruled in their favor in 2014 should now therefore be made to accept responsibility by both parties. SC Worker's Commission previous rulings exempted Amazon and Sedgwick from recognizing unauthorized medical visits and their continuing efforts to obtain records therefore nullify prior orders. Under SC Codes of Laws 42-9-10 states weekly payments shall be made weekly to a person injured on the job when they are unable to work with additional comments.

Question 12: Dr. Paysinger, Columbia, SC/Dr. Stickler, Charleston, SC/Dr. Jervey, Charleston, SC/Dr. Tonia Gantt, Norway, SC and NP Dr. Gonzalez, Norway, SC

Submitted by,

 2-25-2015
Clarence Jenkins Jr

South Carolina Workers' Compensation Commission

1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
(803) 737-5723



WCC File #: 1303989

Date of Injury: 02/10/2013

CLARENCE JENKINS v. AMAZON.COM,DEDC, LLC
WCC File No. 1303989

The Commission is hereby providing you a copy of the Form 50 filed by the unrepresented claimant pursuant to R.67-207 A (3) and R.67-211.

Amy A. Bracy
Amy A. Bracy
Judicial Director

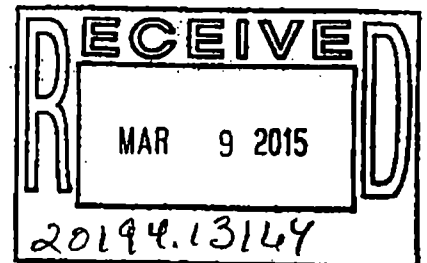
Date: March 3, 2015

CERTIFICATE OF SERVICE

I hereby certify on March 3, 2015, I served this document on the parties listed below by electronic mail or depositing a copy hereof, postage prepaid, in the United States mail and addressed as follows:

J. Russell Goudelock, II (5)
McAngus Goudelock & Courie, LLC
PO Box 12519
Columbia, SC 29211

By: Tracy S. Riddle, Judicial Department



THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

W.C.C. File No.: 1303989

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SC Court of Appeals

Clarence B. Jenkins, Employee, Appellant,

v.

Amazon.Com DEDC, LLC, Employer, and
Zurich Ins. Co., Carrier, Respondents.

PROOF OF SERVICE

I certify that on the 30th day of August 2016, I served the Respondents' **Second Motion for Correction of and/or to Strike Items From Appellant's Designation of Matter and Initial Brief** on Clarence B. Jenkins, *pro se*, by depositing a copy of it in the United States Mail, postage prepaid, addressed as follows:

Clarence B. Jenkins
945 Wire Road
Neeses, South Carolina 29107



Michaela Shephard
Legal Assistant to Helen F. Hiser
McAngus, Goudelock & Courie LLC
735 Johnnie Dodds Blvd., Suite 200
P.O. Box 650007
Mount Pleasant, South Carolina 29465
(843) 576-2900

*Attorneys for Respondents Amazon.Com DEDC,
LLC and Zurich Ins. Co.*

mgc

Reply To

HELEN F. HISER
Direct Dial: (843) 576-2930
helen.hiser@mgclaw.com

August 30, 2016

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AUG 31 2016

SC Court of Appeals

Via U.S. Mail

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: Clarence B. Jenkins v. Amazon.com and Insurance Company of the State
of Pennsylvania c/o Sedgwick Claims Management Services, Inc.
Date of Accident: February 10, 2013
WCC File No.: 1303989
Our File No.: 20194.13164
Claim No.: 30130262998
Appeal No.: 2016-000598

Dear Ms. Kitchings:

Enclosed please find the original and seven (7) copies of Respondents' Second Motion for Correction of and/or to Strike Items From Appellant's Designation of Matter and Initial Brief, and the original and one copy of the Proof of Service in the above-referenced matter. Please file the originals and return a clocked-in copy in the self-addressed, stamped envelope. Also enclosed is our firm's check in the amount of \$25 for filing the motion.

If you have any questions, please do not hesitate to contact me.

Yours truly,

McAngus Goudelock & Courie, LLC



Helen F. Hiser

Enclosures

cc: Clarence B. Jenkins, *pro se*

735 JOHNNIE DODDS BLVD, STE 200
POST OFFICE BOX 650007
MT. PLEASANT, SC 29465

843.576.2900 PHONE
843.534.0605 FAX
WWW.MGCLAW.COM

mgc

**INSURANCE
DEFENSE**

POST OFFICE BOX 12519
MT. PLEASANT, SC 29465

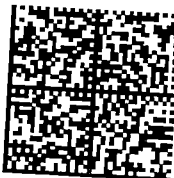
20194.13164/HFH/mls
The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
P.O. Box 11629
Columbia, South Carolina 29211

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SC Court of Appeals

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PRIORITY MAIL 2-DAY™

Michaela Shepherd
McAngus Goudelock & Courie
735 Johnnie Dodds Blvd
Mt. Pleasant SC 29464

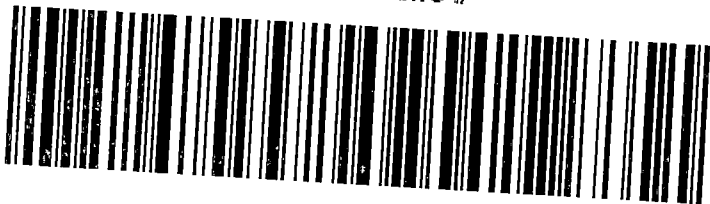
Delivery Date: 08/31/2016

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Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
PO Box 11629
Columbia SC 29211-1629

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SC Court of Appeals