

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

SEP 12 2016
SC Court of Appeals

W.C.C. File No.: 1303989

Clarence B. Jenkins, Employee,Appellant,

v.

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

**REPLY TO APPELLANT'S RETURN IN OPPOSITION
TO 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. reply to Appellant's September 6, 2016 letter to the Court in opposition to Respondents' Second Motion to Strike. As set forth in detail in Respondents' Second Motion to Strike, Appellant failed to comply with this Court's August 11, 2016 Order in that his revised Designation of Matter to be Included in the Record on Appeal ("Revised Designation") and his revised [Initial] BRIEF OF APPELLANT ("Revised Initial Brief") continue to include material that was not part of the record before the Commission.

The issue is not whether Respondents have knowledge of or are even in possession of certain documents, but whether the documents were part of the

Commission record below.¹ 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); Martin v. Rapid Plumbing, 369 S.C. 278, 288, 631 S.E.2d 547, 553 (Ct. App. 2006); Rule 210(c) SCACR (“[t]he Record shall not ... include matter which was not presented to the lower court or tribunal”).

Appellant apparently continues to misunderstand the distinction between his right as a *pro se* claimant to not file a Pre-Hearing Brief pursuant to S.C. Code Reg. § 67-611, which all parties agree he was not required to do, with his obligation to provide written reports and other documentary evidence to Respondents in advance of the single commissioner hearing pursuant to S.C. Code Reg. § 67-612, which he was required to do regardless of his status as a *pro se* claimant. Regulation 67-612 requires that parties provide the other side with expert records, reports and notices in advance of the evidentiary hearing or run the risk that the evidence will be excluded. As the Single Commissioner correctly observed, this requirement is intended to prevent “trial by ambush.” (Att. A, p. 13)².

Appellant did not provide any of his proposed submissions to counsel for Respondents prior to the May 21, 2015 hearing before the Single Commissioner. As a result, and because Appellant chose to proceed without counsel, the hearing went forward and his request to submit the multiple folders of documents he brought with him to the hearing was denied. (Att. A, pp. 4-17). A *pro se* litigant “who knowingly elects to

¹ Likewise, attaching documents to his September 6, 2016 letter does not alter the fact that they were never part of the Commission record below.

² References to Attachments herein are to the attachments to Respondents’ first Motion for Correction of and/or to Strike Items from Designation of Matter, dated June 17, 2016.

represent himself assumes full responsibility for complying with substantive and procedural requirements of the law.” State v. Burton, 356 S.C. 259, 265, 589 S.E.2d 6, 9 (2003); *see also* State v. Hollman, 232 S.C. 489, 498, 102 S.E.2d 873, 877 (1958) (established rules of procedure are not to be discarded, either in the trial court or on appeal, merely because the defendant has been his own lawyer”), *overruled on other grounds by* Stevenson v. State, 335 S.C. 193, 516 S.E.2d 434 (1999).

Respondents vigorously reject any suggestion that they are “deliberately and intentionally delaying this case,” as Appellant suggests. They have a right to have this appeal decided on the record before the Commission and to oppose Appellant’s belated attempts on appeal to supplement the Commission record by designating non-record material. It is telling that Appellant does not even allege that the materials Respondents object to in their Second Motion to Strike were actually admitted by the Commission as part of the record. Although he attempted to “submit” a volume of records to the Single Commissioner and again to the Appellate Panel, those attempts properly were denied. (Att. A, pp. 6, 8, 12, 13, 16, 19, 108) (Att C, pp. 1-11, 18-19).

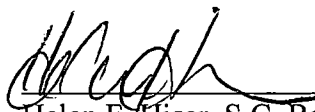
Finally, it is unclear precisely what Appellant intends his request that this Court contact the S.C. Attorney General’s Office Insurance Fraud Division for “fraudulent distortion of claimant’s records” to accomplish. Appellant again appears to misunderstand that counsel for Respondents is not required to make his case for him and that they have the right to present the evidence that supports their case, (Att. A, pp. 3, 98-99), just as he had the opportunity, but failed, to timely present evidence to support his case. Patently, Respondents’ efforts to present a strong defense of this case do not constitute insurance fraud.

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 in their Second Motion to Strike. Respondents continue to request that the briefing schedule be stayed while the Court considers this Motion.

McANGUS GOUDELOCK & COURIE, LLC

September 9, 2016



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PROOF OF SERVICE

I certify that on the 9th day of September 2016, I served the Respondents' **Reply to Appellant's Return in Opposition to 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
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*Attorneys for Respondents Amazon.Com DEDC,
LLC and Zurich Ins. Co.*

mgc

Reply To

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September 9, 2016

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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' Reply to Appellant's Return in Opposition to 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.

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

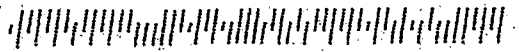
Yours truly,

McAngus Goudelock & Courie, LLC


Helen F. Hiser

Enclosures

cc: Clarence B. Jenkins, *pro se*



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SC Court of Appeals

20194.13164/HFH/mls
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