

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA  
WORKERS COMPENSATION COMMISSION  
Commissioner Gene McCaskill

RECEIVED  
OCT 10 2018  
SC Court of Appeals

WCC File No: 1410083  
Appellate Case No 2016-001457

Terry McCall, Employee ----- Appellant

Trojan Labor/Hire Oust, Employer ----- Respondent

Opposition Motion To Dismiss Appeal

The appellant moves this Court to issue and Order denying the Respondents request to dismiss his appeal based on the following. Appellant has not directly appealed the Order from the single commissioner, without requesting review by the full commission. Upon request for review by full commission "requesting to be heard by waiving the filing fee, due to the Appellants indigency status while now incarcerated after his on the job injuries. The Appellants form 32 was rejected, and ordered to pay a filing fee he did not have.

The Appellant Attempted several times to be allowed to file for review with the full commission without paying filing fee at the present time. And requested the filing fee's be removed from his prison financial account "under the Prison Litigation Act" when he received monies, until payments for filing fees were received in full. As other state and Federal Courts allow inmates to proceed without payments in full for filing fee's. However the Commission Chair Person declined any responses, rejecting him.  
The Appellant argues the S.C. Regulation standard for filing fees in Workers Compensation Claims / Appeals is fundamentally unfair, unconstitutional and prejudicial. Where only you allowed to file without payments if the Chair Person approves you. But no criteria is mentioned to what it takes to be granted the right to Appeal/waive filing fees / or what you may be turned down for or rejected. How can you know why you are turned down in order to correct the problem.

This type Regulation does nothing more than provides the South Carolina Workers Compensation Chairperson the right/ability to deny, reject Appeal Indigency filings just to block Appeals or filings. This is a Procedural Due Process Violation And a Constitutional Right, And to do so deprives the indigent injured employee/Appellant his right to Appeal because of his poverty status. This is fundamentally unfair and is nothing more than a vehicle for Blocking Appeals or other filings.

### Facts of the Case

Appellant alleges he suffered injuries to his neck, back, right shoulder, right hand/wrist, and which Respondent failed to mention (Elbow), and Hernia. When he tripped over a wire and fell while employed with Respondents, Trojan Labor/Hire Quest June 30<sup>th</sup>, 2014 and July 4<sup>th</sup>, 2014. In which June 30<sup>th</sup>, 2014 claim number was closed out and consolidated this claim# with July 4<sup>th</sup>, 2014 claim#, without ever informing Appellant/claimant that this had occurred. Appellant filed a form 50 requesting a hearing, Respondent filed a form 51 denying the July 4, 2014 claimed injuries. Respondents allege in prior correspondences they filed a form 51 denying the claim for July 2014 injuries but this form 51 was never served on the claimant/Appellant by Respondents, with any denial. And to this day has never provided the Commissioner or Appellant with any proof of service.

A hearing was scheduled before Commissioner Wilkerson in Greenville, South Carolina on April 1<sup>st</sup>, 2015. The Commissioner issued an order on April 8, 2015 returning the file to General files to allow Appellant/claimant additional time to retain counsel, and allowing the carrier to file a form 19 seeking closure of the claim, In the event claimant/Appellant failed to pursue benefits within (60) days.

On April 22, 2015 Appellant advised the Commission he was requesting another hearing. Following Appellants transfer from Greenville South Carolina, County Detention Center, to Kirkland Correctional R&E Center "And not Broad River as record reflects. A hearing was set for August 28, 2015 before Commissioner McCaskill, On February 24<sup>th</sup>, 2016, the single Commissioner issued an order denying Claimants request for benefits. At which time immediately after, Appellant filed a motion for Re-hearing/Reconsideration "And a form 32 to waive filing fees. And the Waiver was granted. The Appellant argues his indigency status has not changed and why the Chair Person would reject his Appeal filings for review by full commission makes no sense.

Appellant argues he has had several items of legal material misplaced by S.C.D.C. due to his transferring. Which deprived him from being able to provide the Court with the Order/transcript as requested. But on July 20, 2016 Appellant filed with the Court Commissioner McCaskill's Order denying benefits. And has now 'Attached to his opposition motion to Dismiss Appeal, The Transcript which he was provided with.

Appellant Prays and request the Court consider his transferring "lost legal item conditions," As well as his lack of experience as a Pro se litigant in this matter And provide to some extent some leadway exceptions for his un-prevented delays in providing transcript. The Appellant has made All good faith efforts to provide the items to the Court, but through no fault of his own he was delayed.

The Appellant argues his Appeal is not Improper As Respondent states, Because he did not directly Appeal to the Court of Appeals without requesting review by the full Commission, but was rejected to be Allowed review without first paying the filing fee. Therefore the Court of Appeals is the only Court next Procedurally available to argue the rejection of his indigency status filings Appeal requesting review by the full Commission.

If the Court of Appeals does find the Appeal is improper the Appellant request the Court of Appeals issues And Order sending the Case back to the full Commission for review, requesting the Appeal be heard allowing the funds be removed, from inmates financial account monthly when ever he receives monies,

Under the Prison Litigation Act, Or As it was before when  
the Motion to Reconsider was filed And fee was waived by  
Chair Person, that it be waived again Once financial  
status is proven indigent by Appellant, Or that the  
Court of Appeals hears the Appeal, And deny the  
Motion to dismiss the Appeal by the respondents.  
Because the Respondents have misled the Court by  
stating the Appellant directly Appealed without first  
requesting review by the full commission, that is so untrue.  
And the record speaks for its self.

### Conclusion

Based on the foregoing argument, Appellant respectfully request  
the Court deny Respondents Motion To Dismiss Appeal, Allow  
Appellants Appeal to be heard by Court of Appeals, Or issue and  
Order returning the Appeal to be heard by the full commission  
without payment; debiting the Appellants "Criminal Financial  
account for the \$150<sup>00</sup> payment until made in full, Or as the  
Court deems just And proper.

Columbia, S.C.

Dated 10-3-2016

see: Attachments Exhibits

Respectfully Submitted

Terry McCall

Terry McCall 233236 S.C.D.C.#

W.C.I. 15-39B

4340 Broad River Rd

Columbia, S.C. 29210

Attorney for Appellant, Pro se

Appellants Opposition Motion To Dismiss Appeal

Certificate of Service

I, Terry McCall certify that I have served the Appellants  
Opposition Motion To Dismiss Appeal upon All parties, by placing  
a copy in the United States Mail, Postage Prepaid, to All  
parties on 10-3-2016 addressed to the following:

Dated 10-3-2016

Parties Served

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SC Court of Appeals

South Carolina Court of Appeals

Jenny Abbott Ditchings clerk

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Columbia, S.C. 29211

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In Re: Filing Opposition Motion To Dismiss Appeal  
Appellate Case No: 2016-001457

Dear Clerk of Court,

Find enclosed the opposition  
motion to Dismiss Appeal by Appellant. which needs  
filed, copy clock stamped filed and returned to  
Appellant for his records

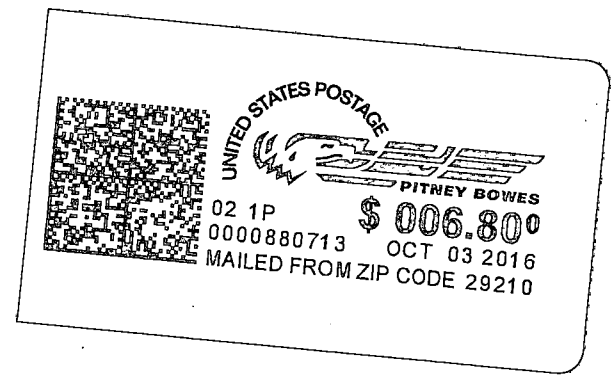
S Terry McCall

Enclosed is the Transcript of Record, copy of Order,  
Perfecting Appeal.

Terry McCall #233236

Legal Mail

W.C.T. - W5-39B  
4348 Broad River Rd  
Columbia, S.C.  
29210



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South Carolina Court of Appeals

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