

The South Carolina Court of Appeals

Clarence B. Jenkins, Employee, Appellant,

v.

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

Appellate Case No. 2016-000598

ORDER

On August 11, 2016, we issued an order requiring Appellant to serve and file an amended designation of matter that only designated matter that was actually presented to the court below and an amended initial brief that only contained references to documents that were presented to the court below. Subsequently, Appellant served and filed an amended designation of matter. Respondents have now filed a motion to strike items from Appellant's designation of matter, arguing the items were not presented to the court below. These items 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;

#17. Medical Records from Dr. Sharon Eden, Dr. Tomachio, Dr. Tonia Gantt and Dr. Gonzalez of Norfiel Medical center regarding Claimant's Medical Condition on form 50 dated February 25, 2015;

#18. Documentations from Amazon.Com DEDC, LLC Human Resources (Michelle Boyle) placing Claimant on a leave because of medical condition/restrictions dates August 14, 2013, May 21, 2015 Transcript;

#19. Medical Records by Dr. Paysigner, Dr. Stickler and Dr. Jervey on form 50 dated February 25, 2015;

#21. A letter from Amazon.Com DEDC, LLC Legal Representation, Attorney Elizabeth Render confirming appointment with Dr. Charles Jervey dated November 4, 2013 stated on form 50 filed February 25, 2015;

#22. A Health care Provider Certificate for FMLA completed by Dr. Mahmoud Abu-Ata, assigned worker's compensation doctor regarding claimant medical condition a/restrictions dated March 9, 2014;

#26. Short-Term and Long-Term Disability Payments from Liberty Mutual Insurance, May 21, 2015 Transcript;

#31. A letter from Phadrea Butler, Amazon former employee dated May 18, 2015, May 21, 2015 Transcript;

#32. Received a letter from Regina Mohammed mailed November 12, 2013 as witness account to claimant physical condition, an Amazon former employee dated, May 21, 2015 Transcript;

#33. Disability Payments from Amazon.Com DED, LLC dated March, 2014 to April, 2014;

#34. Long-Term Disability Payments from Aetna Insurance, May 21, 2015 Transcript;

#35. An email from Attorney, Russell J. Goudelock on April 24, 2014 stating Claimant will not receive worker's compensation benefits; May 21, 2015 Transcript;

#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;

#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. Goudeock on July 11, 2014 potentially scheduling another appointment other than Dr. Mahmoud Abu-Ata, May 21, 2015 Transcript;

#40. Exhibit from South Carolina Worker's Compensation Commission Traumatic Brain Injury Training dated May 2, 2014;

#41. Exhibit from South Carolina Brain Injury Leadership Council dated April 22, 2014.

In response, Appellant filed a motion to dismiss Respondents' request to strike, which we construe as a return.

After careful consideration, Respondents' motion to strike is granted to the extent that Appellant shall serve and file an amended designation of matter which excludes the designations set forth above. *See* Rule 210(c) (providing the record on appeal shall not "include matter which was not presented to the lower court or tribunal"). Appellant shall also serve and file an amended initial brief which excludes all references to the items stricken by this order. *See* Rule 208(b)(4), SCACR ("The brief shall contain references to the transcript, pleadings, orders, exhibits, or other material which may be properly included in the Record on Appeal to support the salient facts alleged.").

 J.
FOR THE COURT

Columbia, South Carolina

cc:

FILED
October 25, 2016

Clarence B. Jenkins
J. Russell Goudelock, II, Esquire
Helen F Hiser, Esquire