

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

Carlos Kinlaw,)

Plaintiff)

v.)

South Carolina Workers' Compensation)
Commission,)

Defendant.)

IN THE COURT OF
COMMON PLEAS
14TH JUDICIAL CIRCUIT

CASE NO. 2015-CP-07-02946

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ORDER

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Background

On May 25th, 2016, the undersigned heard Defendant's Motion to Dismiss in 2015-CP-07-02946, *Carlos Kinlaw v. South Carolina Workers' Compensation Commission*.¹ This suit is the latest in a series of lawsuits Plaintiff, proceeding *pro se*, has filed with this court against the Workers' Compensation Commission (the Commission) regarding grievances Plaintiff has against the Commission relating to the handling of his workers' compensation claims.

Workers' Compensation Claims

Plaintiff filed two claims against his employer, Lowe's Home Improvement Centers, Inc., alleging injuries by accident arising out of and in the course of his employment. Pursuant to S.C. Code Ann. § 42-1-540 and § 42-3-180, those matters were adjudicated by the Workers' Compensation Commission.

Plaintiff's first workers' compensation claim, assigned WCC File No. 0917941, was resolved pursuant to § 42-9-390 by a Settlement Agreement and Release filed with the Commission on March 21st, 2011. Plaintiff agreed to waive any and all rights to further benefits under the Workers' Compensation Act in exchange for payment to him by the employer of \$24,400.00. Plaintiff accepted payment of the settlement and was represented by counsel in the matter.

¹ Defendant also filed a Motion to Set Aside Plaintiff's Affidavit of Default and Entry of Default. However, no default had been entered so this motion was not properly before the Court.

After the Agreement and Release had been signed by the Plaintiff, but prior to it being filed with the Commission, on March 12th, 2011, Plaintiff, proceeding *pro se*, filed a second workers' compensation claim, WCC File No. 1105654. This matter was heard by the Honorable H. Gene McCaskill on April 23rd, 2013. At the Hearing, Plaintiff stipulated to jurisdiction and venue. Commissioner McCaskill issued his Decision and Order on June 28th, 2013, finding that Plaintiff was not entitled to further benefits. Plaintiff appealed this matter pursuant to § 42-17-50 to the Appellate Panel of the Full Commission. The Full Commission accepted briefs and heard oral arguments from the parties on October 14th, 2013. On January 9th, 2014, the Full Commission issued its Decision and Order, affirming the Decision and Order of the single Commissioner. Neither party attempted to appeal this decision to the Court of Appeals within the prescribed time period. Therefore it became the law of the case.

First Civil Action in Beaufort County: 2014-CP-07-01142

Plaintiff then filed a civil action, # 2014-CP-07-01142, on February 25th, 2014 in the Beaufort County Court of Common Pleas, naming not his employer Lowe's Home Improvement Centers, Inc., as Defendant, but rather naming the South Carolina Workers' Compensation Commission as the party Defendant.

Plaintiff filed an amended Summons and Complaint on May 13th, 2014, asserting the Commission committed errors of law, making reference to the South Carolina Tort Claims Act, and requesting the court vacate the decision of the Commission and award him damages. Defendant filed a Motion to Dismiss.

This matter was heard by the undersigned on August 7th, 2014 in Beaufort, South Carolina. Plaintiff appeared *pro se* and the Commission was represented by J. Keith Roberts, Esquire. Also appearing was Scott Graber, Esquire, on behalf of the Insurance Reserve Fund. At the Hearing, Plaintiff moved for the undersigned to recuse herself, on the grounds she had denied his written motion to proceed *in forma pauperis*. After a discussion with the court, Plaintiff withdrew his Motion to Recuse. On August 29th, 2014, the undersigned issued an Order granting Defendant's Motion to Dismiss on the grounds that the court lacked subject matter jurisdiction over the claim and Plaintiff had failed to state facts sufficient to constitute a cause of action. Judge Mullen dismissed Plaintiff's claims in 2014-CP-07-01142 with prejudice.

Over one year later, on August 31st, 2015, Plaintiff attempted to appeal Judge Mullen's August 29th, 2014 decision to the South Carolina Court of Appeals. This matter was dismissed by the Court of Appeals on December 23rd, 2015, and remittitur was sent to the Beaufort County Court of Common Pleas on January 12th, 2016.

Second Civil Action in Beaufort County: 2015-CP-07-00651

According to the records of the Court of Appeals, Plaintiff filed a second Summons and Complaint on March 9th, 2015, Civil Action Number 2015-CP-07-00651. This matter was never served on the Commission, and on June 23rd, 2015 the Complaint was dismissed by the Circuit Court. Plaintiff appealed this matter to the Court of Appeals on the grounds that Judge Mullen erred by denying his request to proceed *in forma pauperis*. The Court of Appeals combined this appeal with the pending appeal filed by Plaintiff of 2014-CP-07-01142 into a single matter under Ct. App. Case Number 2015-001558. Plaintiff's appeal of 2015-CP-07-00651 was dismissed along with the appeal of 2014-CP-07-01142 by Order of the Court of Appeals dated December 23rd, 2015.

Third Civil Action in Beaufort County: 2015-CP-07-02942

The instant case, 2015-CP-07-02942, was created as a result of a Summons and Complaint filed by the Plaintiff *pro se* with this court on December 11th, 2015. Plaintiff's complaint arose out of the same occurrence that was adjudicated in 2014-CP-07-0114: the handling by the Commission of his workers' compensation claim. Plaintiff asserted that the Commission had violated rights guaranteed to him by the 6th and 14th Amendments to the United States Constitution. The December 11th, 2015 Summons and Complaint was not delivered to the Commission, or mailed to the South Carolina Attorney General in accordance with Rule 4(d)(5), SCRCPP.

On February 19th, 2016, the Commission received by mail a Summons and Complaint substantially identical to the Summons and Complaint filed with the court on December 11th, 2015. The February 19th, 2016 Summons and Complaint was not delivered to the Commission or mailed to the South Carolina Attorney General in accordance with Rule 4(d)(5), SCRCPP. The February 19th, 2016 Summons and Complaint has not been filed with the court in accordance with Rule 5(d), SCRCPP. On April 11th, 2016, Plaintiff filed an Affidavit of Default. On April

22nd, 2016, the Commission filed a Motion to Set Aside the Affidavit of Default and a Motion to Dismiss.

A Hearing was held before the undersigned on May 25th, 2016 to hear Defendant's Motions. Before Defendant's counsel could even introduce himself and state his name for the record, Plaintiff interrupted him and demanded that the undersigned recuse herself from considering the matter. Plaintiff stated that the reason the undersigned needed to recuse herself was because he intended to call her to testify as a witness. Plaintiff was not able to articulate in what sort of proceeding the undersigned would be needed to testify, and could not rationally explain how the undersigned's testimony would be necessary.

Counsel for Defendant attempted to put his party's position on the record, namely, that Plaintiff's Complaints should be dismissed pursuant to Rule 12(b)(1), SCRPC for lack of subject matter jurisdiction, Rule 12(b)(6), SCRPC for failure to state facts sufficient to constitute a cause of action, and should also be barred by the doctrine of *res judicata*. Plaintiff continued to forcefully argue that his 6th and 14th amendment rights had been violated by Counsel for Defendant personally. The undersigned asked the parties for proposed orders and adjourned the Hearing.

Order

Plaintiff's Motion for the undersigned to recuse is denied. Plaintiff's stated reason for the recusal, that he needs to subpoena the undersigned to testify as a witness, is not supported by evidence, lacks merit, and does not warrant disqualification under Canon 3(E) CJC, Rule 501 SCACR. The Code of Judicial Conduct requires that a Judge "... shall disqualify himself or herself in a proceeding in which the Judge's impartiality might *reasonably* be questioned" Canon 3(E) CJC, Rule 501 SCACR. (Emphasis added). The Code of Judicial Conduct also requires that a Judge "... shall hear and decide matters assigned to the Judge except those in which disqualification is required." *Id.* at Canon 3(B)(1). "In applying Canon 3 (E)(1), the South Carolina Supreme Court has stated that the movant or petitioner must show some evidence of the bias or prejudice of the judge." *Lyvers v. Lyvers*, 280 S.C. 361, 367, 312 S.E.2d 590, 594 (Ct. App. 1984). "Allegations of facts that are merely frivolous or fanciful will not support a motion to disqualify on the ground of prejudice, nor will conclusory statements, conjecture, or

innuendo be sufficient to support a motion for disqualification.” 46 Am.Jur.2d Judges § 208 (1994). “When disqualification is not required, the South Carolina Code of Judicial Conduct holds, ‘A judge shall hear and decide matters assigned to the judge....’” Canon 3B(1) of the Code of Judicial Conduct, Rule 501, SCACR.” *Simpson v. Simpson*, 377 S.C. 519, 660 S.E.2d 274 (Ct. App. 2008). See *Adair v. State*, 474 Mich. 1027, 709 N.W.2d 567, 579 (2006) (“[W]here the standards governing disqualification have not been met, disqualification is not optional; rather, it is prohibited; *Millen v. Eighth Judicial Dist. ex rel. County of Clark*, 148 P.3d 694, 700 (Nev.2006) (“Thus, a judge has a general duty to sit, unless a judicial canon, statute, or rule requires the judge’s disqualification.”); *Tennant v. Marion Health Care Found., Inc.*, 194 W.Va. 97, 459 S.E.2d 374, 385 (1995) (“Also important, however, is the rule that a judge has an equally strong duty to sit where there is no valid reason for recusal.”).

Defendant’s Motion to Dismiss is granted pursuant to Rule 12(b)(1) and Rule 12(b)(6), SCRCPP, and the doctrine of *res judicata*. This court lacks subject matter jurisdiction to consider complaints arising from alleged errors committed by the Workers’ Compensation Commission. See S.C. Code Ann. § 42-17-60. Plaintiff’s Complaint fails to state a cause of action for which the law provides a remedy. The 6th Amendment to the U.S. Constitution only applies to criminal prosecutions, and has no relevance in this matter. U.S.C.A. Const. Amend. VI. Even if Plaintiff was somehow denied procedural due process under the 14th Amendment by the Commission, his sole remedy was to appeal under § 42-17-60. See *Unisys Corp. v. S.C. Budget & Control Bd.*, 346 S.C. 158, 176, 551 S.E.2d 263, 273 (2001) (stating that exhaustion of remedies precludes original resort to courts where an administrative agency is granted exclusive jurisdiction by the express terms of a statute). *Capital City Ins. Co. v. BP Staff, Inc.*, 382 S.C. 92, 101, 674 S.E.2d 524, 529 (Ct. App. 2009). Finally, Plaintiff’s Complaints are dismissed as they are barred by the doctrine of *res judicata*. The conduct complained of- the handling by the Commission of his workers’ compensation claims- was already adjudicated nearly two years ago in 2014-CP-07-01142. The Order of August 29th, 2014 is the law of the case, and Plaintiff is barred from relitigating any complaints at law arising from that transaction or occurrence. “[R]es judicata bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties.” *Sub-Zero Freezer Co. v. R.J. Clarkson Co.*, 308 S.C. 188, 417 S.E.2d 569 (1992).

Accordingly, Plaintiff's Summons and Complaints are hereby DISMISSED WITH PREJUDICE.

AND IT IS SO ORDERED!

C. Mullen

The Honorable Carmen T. Mullen

Aug 15, 2016
Beaufort, SC