

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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NOV 02 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.

**RETURN IN OPPOSITION TO
REQUEST FOR REHEARING OF
THIS COURT'S OCTOBER 25, 2016 ORDER**

Pursuant to Rule 240(e), SCACR, Respondents Amazon.Com DEDC, LLC and Zurich Ins. Co. oppose Appellant's letter dated October 27, 2016 to this Court ("Letter") to the extent it seeks rehearing of this Court's Order, dated October 25, 2016 ("Order"). Although Appellant indicates that he "will attempt to comply with the Order of the COURT," he also states that that effort will be made "while requesting a reverse of decision."

First, pursuant to Rule 240(i), this Court "will not entertain petitions for rehearing on a motion ... unless the action of the court on the motion ... has the effect of dismissing or finally deciding a party's appeal." Rule 240(i), SCACR. This Court's Order neither dismissed nor finally decided Appellant's appeal but merely ordered him to

amend his Initial Brief and Designation and omit non-record materials. Therefore, any attempt to seek rehearing of the Order is inappropriate and should be denied.

Second, to the extent Appellant's Letter is intended to serve as a motion for rehearing this Court's Order, it is not accompanied by the required filing fee. Rule 240(d), SCACR. As a result, even if a motion for rehearing was appropriate, which it is not, Appellant's Letter should be rejected for failure to file the appropriate filing fee.

Third, Appellant has attached non-record materials to his Letter, some of which were stricken by this Court's Order. In particular, Appellant has attached:

- "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*);
- #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*);
- #38. "An email from Attorney Russell J. Goudelock on July 11, 2014 potentially scheduling another appointment other than Dr. Mahmoud Abu-Ata, May 21, 2015 Transcript;" and
- Email correspondence between Clarence Jenkins Jr. and Rusty Goudelock, dated Apr. 24, 2014 and May 1, 2014.

None of these items are part of the Record before the Commission and, therefore, should be stricken. Furthermore, Appellant should be cautioned about repeatedly attempting to submit non-Record materials to this Court.

Appellant appears to argue that the four voluminous folders of material he brought with him to the hearing before Commissioner Campbell were "presented" to the Commission for purposes of Rule 210(c). However, although Appellant brought the

folders to the hearing, they were never accepted into the Record because he did not provide them to Respondents' counsel prior to the hearing. They were not reviewed by either Commissioner Campbell or opposing counsel at the hearing. Therefore, they were never "presented" to the Commission as is contemplated by Rule 210(c), SCACR. If Appellant were allowed to enter whatever he wanted into the appellate record, asserting that the document was in those unexamined and unsubmitted four folders of material, there would be no limit to what he could introduce into the appellate record. Instead, pursuant to Section 1-23-380(4), appellate review of the Commission's Decision, "must be conducted by the court and must be confined to the record." S.C. Code Ann. § 1-23-380(4); *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).

To the extent Appellant argues that the stricken items and his failure to comply with the Court's rules should be excused because he is proceeding *pro se*, the South Carolina Supreme Court has stated that a *pro se* litigant "who knowingly elects to 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). Appellant was advised repeatedly by the Commission and by opposing counsel that he should obtain counsel, but he declined to do so.

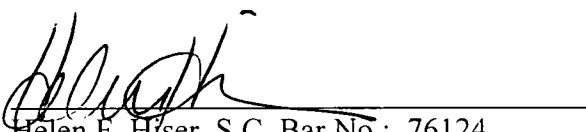
Finally, to the extent Appellant's Letter is intended to be a request for rehearing, he did not ask for any suspension in the briefing schedule as set by this Court. As a result, his Amended Initial Brief and Amended Designation remain due to be filed on November 7, 2016.

CONCLUSION

For the reasons stated herein, to the extent Appellant's Letter is intended to serve as a motion for rehearing of this Court's Order, it should be denied in its entirety. Appellant's Amended Initial Brief and Amended Designation of Matter should be filed as ordered by this Court.

McANGUS GOUDELOCK & COURIE, LLC

October 31, 2016



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P.O. Box 650007
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(843) 576-2900

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

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Clarence B. Jenkins, Employee,Appellant,

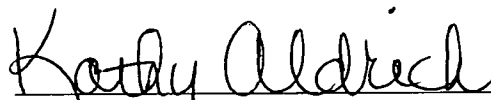
v.

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

PROOF OF SERVICE

I certify that on the 31st day of October 2016, I served the Respondents' **Return in Opposition to Request for Rehearing of this Court's October 24, 2016 Order** 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



Kathy Aldrich
Legal Assistant to Helen F. Hiser
McAngus, Goudelock & Courie LLC
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*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

October 31, 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' Return in Opposition to Request for Rehearing of this Court's October 24, 2016 Order, 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

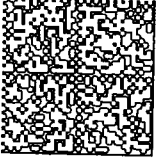
Enclosures

cc: Clarence B. Jenkins, *pro se*

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The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
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Columbia, South Carolina 29211