

THE STATE OF SOUTH CAROLINA
In the Supreme Court

IN THE ORIGINAL JURISDICTION
OF THE SUPREME COURT
PURSUANT TO RULE 245(a)(b), SCACR

Appellate Case No: 2016-_____

Clarence Winfrey, Employee,Petitioner,

v.

SC Workers' Compensation Commission
and Form Administrative Order filed
Without Hearing on November 8, 2016,
and American Fire & Casualty Insurance
Company c/o Liberty Mutual Group, Respondents.

IN RE:

Clarence Winfrey, Claimant, v. Archway Services, Inc., Employer,
and American Fire & Casualty Insurance Company,
c/o Liberty Mutual Group, Insurance Carrier;
SCWCC File No. 1306305

And Respondents' Appeal pending in the SC Court of
Appeals; Appellate Case No.: 2014-001788

MEMORANDUM OF LAW IN SUPPORT OF
PETITION FOR WRITS OF PROHIBITION AND MANDAMUS
AND FOR AN EX PARTE EMERGENCY ORDER
STAYING THE ADMINISTRATIVE FORM ORDER
ISSUED WITHOUT HEARING AND ORDERING
THE REINSTATEMENT OF BENEFITS UNTIL THE
WRITS OF MANDAMUS AND PROHIBITION CAN BE HEARD
AND RULED UPON

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The South Carolina Workers' Compensation Commission is a
creature of statute and its jurisdiction and authority are

derived strictly from statute: the Workers' Compensation Act. Marchbanks v. Duke Power Company, 190 SC 336, 2 SE2d 825 (1939); Price v. Peachtree Electrical Service, Inc., 396 SC 403, 721 SE2d 461 (SC App. 2011). Where there exists no, "pending", employee claim for compensation, the Commission lacks the jurisdiction to decide issues in the case. Laboureur v. Harleysville Mutual Insurance Company, 302 SC 540, 397 SE2d 526 (1990).

The only basis for stop payment of compensation and/or medical care without a hearing under the Act is contained under SC Code §42-9-260(A), (B). Benefits can only be stopped without a hearing the first 150 days of compensation and then for only six (6) specifically enumerated reasons under §42-9-260(B)(1-6). After 150 days and under the only other sections of the Act that allow for a stop payment of benefits provide for and require a hearing (SC Code §1-23-380) as are specifically enumerated under statute; including SC Code §42-15-60 and §42-15-80. There is simply no other basis for the stop payment of benefits with or without a hearing under the Act. Further, SC Code §42-17-20 after there is an agreement and/or award of benefits requires a hearing before those benefits may be stopped.

The Defendant denied the Claimant had sustained injury by accident and was entitled to any compensation or medical benefits under the Act. After the Award of the Commission, that

Award was appealed to the Appellate Courts of South Carolina which is currently pending in our Appellate Courts. After appeal, our Appellate Courts have specific and sole jurisdiction over all issues involved in the Appeal during the pendency of the Appeal. Rule 205, SCACR.

Further, after Award of the Commission and during the pendency of the Appeal, the defendants are required by law to pay the benefits to which a claimant is entitled under the Award of the Commission under the express and mandatory provisions of SC Code §42-17-60.

Finally, even the South Carolina Workers' Compensation Commission Regulations concerning motions (a motion is an ancillary proceeding to a pending action and there is no pending action in this matter), provides that the Commission will not entertain any motion that goes to the, "merits". SCWCC Reg. 67-215(B).

AS TO WRIT OF MANDAMUS AND WRIT OF PROHIBITION

The Writ of Mandamus will lie where the three (3) elements are present and co-exist:

1. A clear right of the Plaintiff to the relief sought;
2. The existence of a legal duty on the part of the Respondent to do the thing which the Petitioner seeks to compel;
3. Absence of another adequate remedy at law.

In The Interest of Lyde, 284 S.C. 419, 327 S.E.2d 70 (1985).

As set forth in the Petition, all three (3) of these elements exist and co-exist in this matter.

As to the Writ of Prohibition, as set forth in Berry v. Lindsay, 256 S.C. 282, 182 S.E.2d 78 (1971), the ancient prerogative Writ of Prohibition which has been in existence and applied in the common law for now over eight (8) centuries lies to prevent the usurpation, excess or improper assumption of jurisdiction on behalf of an inferior tribunal and/or to prevent some great outrage upon the settled principles of law and procedure. It will also lie, but will only lie, when there is not another adequate remedy at law such as by appeal or other prescribed methods for review. The Writ should lie in this case for the reasons as set forth in the Petition.

Respectfully submitted,



Preston F. McDaniel
SC Bar No. 3770
McDANIEL LAW FIRM
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Columbia, SC 29201
(803)771-7211

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Attorney for the Petitioner

November 15, 2016

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PROOF OF SERVICE

I certify that I have served the **PETITION FOR WRITS OF PROHIBITION AND MANDAMUS AND FOR AN EX PARTE EMERGENCY ORDER STAYING THE ADMINISTRATIVE FORM ORDER ISSUED WITHOUT HEARING AND ORDERING THE REINSTATEMENT OF BENEFITS UNTIL THE WRITS OF MANDAMUS AND PROHIBITION CAN BE HEARD AND RULED UPON; MEMORANDUM OF LAW IN SUPPORT; and AFFIDAVIT OF PRESTON F. MCDANIEL** on November 15, 2016 addressed as follows:

VIA HAND DELIVERY

Daniel E. Shearouse, Clerk of Court
SC Supreme Court
1231 Gervais Street
Columbia, South Carolina 29201

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S.C. SUPREME COURT

VIA PERSONAL SERVICE

Ms. Amy Bracy
Judicial Director
SC Workers' Compensation Commission
1333 Main Street, Ste. 500
Columbia, South Carolina 29202

VIA CERTIFIED MAIL - 7002 3150 0005 0281 5623

RETURN RECEIPT REQUESTED

The Honorable Alan Wilson
SC Attorney General
P.O. Box 11549
Columbia, South Carolina 29211

VIA US MAIL

Honorable Jenny Abbott Kitchings
Clerk of Court
SC Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

VIA PERSONAL SERVICE

Brett H. Bayne, Esquire
McAngus, Goudelock & Courie
1320 Main Street, 10th Floor
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Attorney for Petitioner

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S.C. SUPREME COURT

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Proudly representing injured workers
for over 25 years.

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November 15, 2016

VIA HAND DELIVERY

Honorable Daniel E. Shearouse
Clerk of Court
SC Supreme Court
1231 Gervais Street
Columbia, South Carolina 29201

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RE: Clarence Winfrey v. Archway Services, Inc.
Appellate Case No. 2016-_____

Dear Mr. Shearouse:

Please find attached hereto which I am filing with the Court the original and seven (7) copies of our **PETITION FOR WRITS OF PROHIBITION AND MANDAMUS AND FOR AN EX PARTE EMERGENCY ORDER STAYING THE ADMINISTRATIVE FORM ORDER ISSUED WITHOUT HEARING AND ORDERING THE REINSTATEMENT OF BENEFITS UNTIL THE WRITS OF MANDAMUS AND PROHIBITION CAN BE HEARD AND RULED UPON; MEMORANDUM OF LAW IN SUPPORT; and AFFIDAVIT OF PRESTON F. MCDANIEL** in accordance with the provisions of Rule 240 and 245(b), SCACR. Proof of Service on opposing Counsel, the SC Workers' Compensation Commission with copy to the Attorney General via US Registered Mail is attached hereto.

As always, I appreciate all the courtesies and kindnesses shown to me by the Court.

Sincerely yours,



Preston F. McDaniel

PFM/kth
Enclosures

cc: Brett H. Bayne, Esquire (Via Personal Service)
Amy Bracy, SC Workers' Compensation Commission
(Via Personal Service)
Alan Wilson, SC Attorney General
(Via Certified Mail, Return Receipt Requested)
Hon. Jenny Abbott Kitchings, SC Court of Appeals
(Via US Mail)

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