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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM
THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Appellate Panel Decision

Appellate Case No. 2016-001380

David Pate, Employee, Claimant, Respondent,

v.

TAC Logging, Inc., Employer, Respondent, and Forestry Mutual Insurance
Company, Carrier, Appellant,

South Carolina Uninsured Employers' Fund, Defendant, Respondent.

REPLY BRIEF OF APPELLANT

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REPLY

This reply brief addresses UEF's assertion in its brief on pages 11 and 12 that notice of cancellation was not mailed *or* delivered to the insured, in this case TAC, on February 19, 2015, which was 10 days prior to the effective date of cancellation for nonpayment of premium, as required by S.C. Code Ann. § 38-75-730(a) (2016). First, there is no finding of fact by the Commission that Forestry failed to mail notice of the cancellation to TAC on February 19, 2015. Furthermore, all evidence indicates that Forestry did in fact mail notice of cancellation to TAC on February 19, 2015.

Forestry issued a letter to TAC entitled "Confirmation of Policy Termination/Cancellation/Reinstatement Notice," and it clearly and conspicuously states the issue date as February 19, 2015. In that letter, Forestry notified TAC that its policy with Forestry was being terminated effective March 1, 2015, for nonpayment of premium, nonpayment of January self-reporting premium, and missing payroll report from January 2015. (R. p. 69).

As further confirmation that this letter was mailed to TAC on February 19, 2015, a search of NCCI online records conducted on September 28, 2015, documents a cancellation notice was mailed to TAC on February 19, 2015, and the effective date of cancellation for nonpayment of premium was March 1, 2015. (R. p. 79). And, consistent with a February 19, 2015 mailing date, a certified mail return receipt is in evidence and part of the Commission's record, showing that notice was delivered to the TAC on February 24, 2015. (R. p. 101).¹

In sum, all the evidence in the record supports Forestry's assertion that it mailed notice of

¹ At the hearing before the single Commissioner on September 29, 2015, UEF never disputed the fact that Forestry mailed notice of cancellation to TAC on February 19, 2015. However, the issue was raised for the first time in UEF's Supplemental Memorandum in Support dated October 21, 2015 (R. pp.83-6), prompting Forestry to file a copy of the certified mail receipt on October 26, 2015, which became part of the record without objection by the parties.

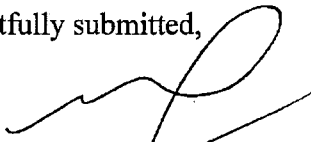
cancellation to the insured on February 19, 2015, 10 days prior to the effective date of cancellation for nonpayment of premiums.

CONCLUSION

For the reasons stated in Forestry's brief and this reply, this Court should reverse the decision of the South Carolina Workers' Compensation Commission.

December 1, 2016

Respectfully submitted,



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