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SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM SOUTH CAROLINA WORKER'S  
COMPENSATION COMMISSION APPELLATE PANEL

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Case No. 2016-000598

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Clarence B. Jenkins Jr., Employee ..... Appellant,

v.

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

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APPELLANT REPLY BRIEF

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Clarence B. Jenkins Jr.,  
945 Wire Rd.  
Neeses, South Carolina 29107  
(803) 263-4514  
Pro Se Appellant

J. Russell Goudelock, II  
PO Box 12519  
Columbia, South Carolina 29211-2519  
(803) 779-2300  
Attorney for Respondents

Helen F. Hiser  
PO Box 650007  
Mount Pleasant, South Carolina 29465  
(843) 576-2900  
Attorney for Respondents

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## STATEMENT OF ISSUES ON APPEAL

- I. Did The Commission erred with R67-611 by denying Appellant to submit Documentations without filing pre-hearing brief?
- II. Did The Commission erred with R67-611 greatly affected the outcome of worker's injury case?
- III. Did Single Commissioner Michael Campbell II. erred with instructions and declaring Appellant lacks credibility from May 21, 2015 hearing?
- IV. Did Commissioner Michael Campbell II erred with R67-611 by ruling that all documentations in the four folders was medical records therefore excluded Financial payments verifying short-term and long-term disability payments from Liberty Mutual and Aetna Insurance submitted by Appellant to clearly disputes Respondents distortions of no disability payments was ever paid?
- V. Did The Commission erred by not requiring and obtaining medical rating and medical release as stated by policy from assigned worker's compensation Doctor, Dr. Abu-Ata?
- VI. Did The Commission erred by declaring in their Decision and Order that Appellant did not received disability compensation?
- VII. Did The Commission erred by not accepting all of Dr. Abu-Ata's medical records and evaluations while declaring some to be an expert's opinion under R67-612?
- VIII. Did The Commission Appellate Panel erred by not accepting medical evaluations from Dr. Carol Benoit and Dr. James Way that verifies a direct and casual relationship to work injury on February 10, 2013 under R67-707?
- VIII. Did The Commission Appellate Panel erred by refusing and rejecting a medical assessment by SCWCC Legal Counsel, J. Keith Roberts in J.R. Brock's report of Lexington County Sheriff Office under R67-707?
- X. Did The Commission erred by accepting MMI was obtained on October 23, 2013 without due prudence to Appellant and Dr. Abu-Ata's recommendations?

- XI. Did The Commission erred by allowing Amazon.Com DED, LLC, employer and American Zurich Ins., carrier to distort Appellant's worker's compensation files even with their own documentations under R67-612?
- XII. Did The Commission showed and display a bias and prejudice towards Amazon.Com DEDC and American Zurich Ins. At May 21, 2015 and December 14, 2015 hearings?
- XIII. Did The Commission erred with S.C. Code Ann. 42-9-10 with non payment of worker's compensation benefits for all the time missed from work because of injury?

### STATEMENT OF THE CASE

Appellant was injured on February 10, 2013 while working at Amazon DEDC, LLC in West Columbia, South Carolina . South Carolina Worker's Compensation Commission (Hereinafter SCWCC) and Respondents violated R67-611 of SCWCC Law by requiring a Pro Se Claimant to filed a pre-hearing brief at May 21, 2015 hearing which prevented a proper defense hearing. R67-611 of SCWCC emphatically states that a self represented claimant is not required to filed a pre-hearing brief. SCWCC was informed the rights of a self represented claimant but ignored the Law of R67-611 even after leaving the bench to review All actions of SCWCC was based on the unjust ruling of R67-611 by Commissioner Michael Campbell II. on May 21, 2015 which did not allowed pertinent documentations by claimant to be submitted after many attempts to do so. The case should be turn on its face for violation of R67-611 which prevented due process by not obtaining a fair hearing. SCWCC Appellate Panel discussed the motion of Appellant

and Respondents off the record in the absent of both party demanding leave therefore rendering a decision in favor of the Respondents to deny additional records that was not available or could be secured before May 21, 2015 hearing without clarification or privily to discussions. SCWCC Appellate Panel affirmed that Commissioner Michael Campbell II did not err with R67-611 requesting Appellant to filed a pre-legal brief therefore prevented a proper defense which greatly affected the Commission's rulings a total disregard for the law. Appellant declared that The Commission was shown a bias and prejudice towards Respondents.

### **FACTUAL BACKGROUND**

Respondents has acknowledged that Appellant brought with him four folders to the South Carolina Worker's Compensation Commission Hearing on May 21, 2015 which is true but objected to submission. Respondents has stated in their Initial Brief on page 6 second paragraph lines 1-2 agreeing that a Pro Se Appellant is not required to submit a Form 58 Pre-Hearing Brief is an admission of guilt and violated my rights by objecting to submission of pertinent documentations and SCWCC made an unlawful ruling on May 21, 2015 which affected the outcome.

Amazon.Com DEDC, LLC and American Zurich Ins. has focused the majority of their time and expertise on Dr. Jervey and Dr. Stickler where it should have not been due to Appellant has spent less time with both compared to Dr. Abu-Ata, assigned worker's compensation doctor. Dr. Jervey did not even examined Appellant but did a quick study of reports in his presence sent by Amazon.Com and American Zurich Ins. and when

asked about an examination he quoted "only to give a second opinion" which concluded my office visit and not one touch from him to complete any test. Respondents has stated Dr. Stickler did not determined any medical or physical condition with Appellant is another distortion. Dr. Stickler has stated in his report and deposition that hypersensitivity in the top and bottom of left foot. Furthermore Dr. Stickler Office would not even verify my office visit to Aetna Ins. to determined the need of disability as stated in an email from Monica Goss.

Appellant filed a complaint with SCHAC against Amazon for disability discrimination and retaliation. SCHAC in December, 2013 found that Amazon.Com on charges of disability discrimination and retaliation to be aggrieved based on evidence. SCHAC held mediation with Amazon.Com and Appellant on April 24, 2014 because of disability discrimination and retaliation violations since work injury on February 10, 2013.

#### **STANDARD OF REVIEW**

SCWCC did not review case no. #1303989 in its totally where compelling documentations were enclosed in the file. Appellant did sustained a head injury on February 10, 2013 at Amazon.Com. DEDC, LLC. Amazon.Com DEDC, LLC has acknowledge and accepted Appellant's worker's injury claim. Appellant's injury is compensable under S.C. Code Ann. 42-9-10. Appellant Respondents accepted medical documentations from several medical providers of a post concussion syndrome where he was placed on a leave of absent for many months. Appellant was allowed to return to

Amazon.Com DEDC, LLC under work restrictions that was accepted and determined by Respondents. Appellant had an excellent work performance record until head injury then Respondents began to harass and created a hostile work environment by weekly write ups. Appellant was eventually terminated April, 2015 while being placed on a leave of absence by AmazonCom DEDC, LLC. Respondent's Initial Brief is clutter with untruths to discredit Appellant's injury and facts that are pertinent to this case. Commissioner Michael Campbell II. Made an egregious error of R67-611, Appellant's pertinent medical and supportive documentations was blindly excluded under R67-612, Appellant has received disability payments from Liberty Mutual and Aetna insurance which Respondents has denied but has been documented at SCWCC. Respondents has blatantly notified Appellant that compensation will not be paid even though Amazon.Com DEDC, LLC Human Resources has denied access to the work site due to work injury and work restrictions. Respondent's Initial Brief has stated that Appellant did not address egregious error of R67-611 on his form 30 to SCWCC Full Appellate Panel which is another distortions which can be verified by actual document. Respondents has acknowledge in their Initial Brief that Appellant applied 38 pertinent documentation to Form 30 dated August 25, 2015 for SCWCC Full Appellate Panel review therefore is another verification that all documentations was not all medical records. Respondents has acknowledge in Initial Brief on page 6 in second paragraph lines 1-2 that a pro se claimant is not required to submit a form 58 Pre-Hearing Brief. SCWCC Full Appellate Panel denied submission of pertinent documents stating Appellant had to filed a Pre-Hearing Brief which is a

misrepresentation of R67-611 therefore violated rights of a fair hearing and due process. Appellant has not been release or submitted a medical rating by assigned worker's compensation doctor, Dr. Abu-Ata, SCWCC Law required that assigned worker's compensation doctor provide a medical rating and release by Dr. Abu-Ata which has not been obtained by Respondents or The Commission therefore a violations of rights under the South Carolina Worker's Compensation Act.

## ARGUMENTS

**I. Did The Commission err with R67-611 by denying Appellant to submit Documentations without filing pre-hearing brief?**

Respondents admittance that Commissioner Michael Campbell II err with regards to R67-611. Defendants Reply to SCWCC Full Appellate Panel dated October 9, 2015 clearly verified and confirms their admission that R67-611 requiring a self represented claimant filed pre-hearing brief is a violation of the law.

**II. Did The Commission error with R67-611 greatly affected the outcome of worker's injury case?**

Respondents has again confirmed in their Initial Brief on page 18 paragraph one lines 5-6 that Commission Michael Campbell II committed an error with regards to R67-611.

**III. Did Single Commissioner Michael Campbell II. err with instructions and declaring Appellant lacks credibility from May 21, 2015 hearing?**

The Court has ruled that it is not lawful for a single commissioner to declared that

a claimant lacks credibility therefore Commissioner Michael Campbell II with his Proposed Order Instructions and Decision and Order violated previous rulings.

**IV. Did Commissioner Michael Campbell II err with R67-611 by ruling that all documentations in the four folders was medical records therefore excluding financial payments verifying short-term and long-term disability payments from Liberty Mutual and Aetna Insurance submitted by Appellant to clearly disputes Respondents distortions of no disability payments was ever paid?**

Appellant was declared disable due to work injury on February 10, 2013, medical symptoms and medical documentations from medical professionals submitted to Amazon.Com DEDC, LLC as verification by Appellant. Appellant was determined to be disable and received disability payments from Liberty Mutual And Aetna Insurance that was included in the four folders brought on May 21, 2015 denied by Commissioner Michael Campbell II. as expert documentations under R67-612. Appellant's financial verifications of disability payments from Liberty Mutual and Aetna Insurance had nothing to do with R67-612 therefore was not provided due prudence and due process required by law. The Decision and Order On May 21, 2015 and Decision and Order on May 26, 2016 is are fraudulent documents.

**V. Did The Commission err by not requiring and obtaining medical rating and medical release as stated by policy from assigned worker's compensation Doctor, Dr. Abu-Ata?**

Amazon.Com DEDC, LLC and American Zurich Ins. are correct in their Respondent's Initial Brief that it was agreed Dr. Abu-Ata would be the treating physician ordered by Commissioner Roche but they have approved or rejected his findings when it

is convenient and profitable for them. Respondents have distorted Dr. Abu-Ata medical records by only submitting partial documentations when it can be verified by extensive medical records provided to Appellant and Respondents. Dr. Abu-Ata emphatically stated to Nurse Kelly Wells on June 20, 2014 in my presence that he was not going to provide a medical rating due to Appellant condition. Dr. Abu-Ata has not medically release Appellant or provided Respondents with a medical rating is a violation of South Carolina Worker's Compensation's Policies and Laws which has continued to harm is a validation and justification declaring the rulings of South Carolina Worker's Compensation Commission to be unlawful.

**VI. Did The Commission err by declaring in their Decision and Order that Appellant did not received disability compensation?**

Respondents has stated at May 21, 2015 and December 14, 2015 hearings that Appellant did not received disability payments as confirmed in August 14, 2015 and May 26, 2016 Decision and Order by SCWCC which is a fraudulent fact to deceived therefore Documents are illegal.

**VII. Did The Commission err by not accepting all of Dr. Abu-Ata's medical records and evaluations while declaring some to be an expert's opinion under R67-612?**

Respondent's distortions was expressed at May 21, 2015 and December 14, 2015 hearing by stating to R67-612 regarding medical documentations and evaluations by a medical expert to deny the admission of pertinent documentations within the four folders that included short-term and long-term disability payments from Liberty Mutual and

Aetna Insurance, email communications to Amazon.Com DEDC, LLC and American Zurich Ins. informing of medical condition, witness accounts, designated work restrictions by Amazon.Com, medical documentations and disability discrimination and retaliation complaint filed with South Carolina Human Affairs Commission (hereinafter SCHAC). The factual problems with Respondents and SCWCC considering Dr. Abu Ata's medical documentation as an expert under R67-612 at May 21, 2015 hearing is suspect based on fraudulent intent due to submission of partial records from him that would benefit Amazon.Com DEDC, LLC and American Zurich Ins. therefore selectively excluding known additional medical records that supports the condition of Appellant and assigned worker's compensation doctor.

**VIII. Did The Commission Appellate Panel err by not accepting medical evaluations from Dr. Carol Benoit and Dr. James Way along with United States Social Security Determination that verifies a direct and casual relationship to work injury on February 10, 2013 under R67-707?**

Appellant met R67-707 as pertaining to presentation of additional and newly discovered medical evidence after the close evidentiary hearing on May 21, 2015 to SCWCC Full Appellate Panel by a motion to include independent experts evaluations of Dr. Carol Benoit on July 9, 2015 emphatically concluded that claimant developed depression and anxiety since his head injury and Dr. James Way on August 20, 2015 emphatically determined that medical symptoms was adjustment disorder with depressed mood. Dr. Way also confirmed post concussion syndrome, headaches, hypertension, degeneration of cervical intervertebral disk, degenerative cervical spinal stenosis per

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medical records. United States Social Security Administration in their findings determined that evidence reviewed shows that your condition(s) causes some work related restrictions therefore a direct and casual relationship has been established to original head injury. See attachments. Appellant met or exceeded the requirement in *Bettis v. Busbee*, 283 S.C. 502, 323 S.E.2d 536, 538 (Ct. App. 1984) and *In re Crawford* 205 S.C. 72, 80-81, 30 S.E.2d 841, 844 (1944). Appellant fulfilled *Martin*, 369 S.C. at 287, 631 S.E.2d at 552 due to examinations and evaluations being completed on July 9, 2015 and August 20, 2015 as ordered by United States Social Security Administration after May 21, 2015 SCWCC Hearing and a determination received at a later time submitted by a motion which was rejected by SCWCC Full Appellate Panel after meeting the lawful standard of *Martin*, 369 S.C. at 287, 631 S.E.2d at 552 was not be known to the party and could not have been secured by reasonable diligence under R67-707.

**VIII. Did The Commission Appellate Panel err by refusing and rejecting a medical assessment by SCWCC Legal Counsel, J. Keith Roberts in J.R. Brock's report of Lexington County Sheriff Office under R67-707?**

Furthermore SCWCC Full Appellate Panel rejected an investigative report by J.R. Brock of Lexington County Sherriff Office where Legal Counsel, J. Keith Roberts for SCWCC informed the officer of Appellant post traumatic stress disorder on November 12, 2015 from his established worker injury claim which is after the May 21, 2015 hearing which met the lawful standard in *Martin*, 369 S.C. at 287, 631 S.E.2d at 552 was not be known to the party and could not have been secured by reasonable diligence.

**X. Did The Commission err by accepting MMI was obtained on October 23, 2013 without due prudence to Appellant and Dr. Abu-Ata's recommendations?**

Amazon.Com DEDC, LLC and American Zurich Ins. has stated that Maximum Medical Improvement was obtained October 23, 2013 and SCWCC affirmed in their rulings then a statement of a missed follow up appointment Dr. Abu-Ata dated January 23, 2014 in SCWCC Decision and Order dated August 14, 2015 on page 12 in paragraph one disputes this distorted claim by Respondents. Respondents has declared maximum medical improvement on October 23, 2013 by Dr. Stickler. I actually saw and was by examined by Dr. Stickler on August 20, 2014 which is one year and six months after initial injury therefore it is impossible for him to declared MMI on October 23, 2013 unless he had perform a prior examination on Appellant therefore justice is blind and due process under the law has no credibility.

**XI. Did The Commission err by allowing Amazon.Com DED, LLC, employer and American Zurich Ins., carrier to distort Appellant's worker's compensation file even with their own documentations under R67-612?**

SCWCC has never clarify what specific documents provided by Appellant On May 21, 2015 and December 14, 2015 hearings was considered an expert's opinion therefore made a decision to deny without ever seeing the documents here again verifies blind justice without due process. Furthermore verifies the bias and prejudice of SCWCC against Appellant.

**XII. Did The Commission showed and display a bias and prejudice towards Amazon.Com DEDC and American Zurich Ins. At May 21, 2015 and December 14, 2015 hearings?**

SCWCC and Amazon. Com DEDC, LLC and American Zurich Ins. has consistently states that Appellant was advised to get legal counsel at May 21, 2015 and December 14, 2015 hearings was completely deceitful and trickery because when a decision was made to seek legal counsel at the advice of Commissioner Michael Campbell II. and SCWCC Appellate Panel all decided to proceed with Respondents request for a hearing therefore subjecting Appellant to a disadvantage and the inability to receive due process under the law. Appellant decided to proceed and to be presence for the hearing due the deceitful, trickery, bias and prejudice of Commissioner Michael Campbell II. to ensure his rights was sustain for future court proceedings.

**XIII. Did The Commission err with S.C. Code Ann. 42-9-10 with non payment of worker's compensation benefits for all the time missed from work because of injury?**

Amazon.Com DEDC, LLC, American Zurich Ins. and SCWCC does not have a medical release and rating as required by SCWCC Laws from Dr. Abu-Ata. Mediation was unsuccessful due to Amazon.Com DEDC, LLC and American to support needs of Appellant. Appellant was unable to work and was not provided worker's compensation benefits as SCWCC Laws requires.

## CONCLUSION

SCWCC has refused to acknowledge payment of disability benefits from Liberty Mutual and Aetna Ins. even though verification has been provided to them. SCWCC Regulatory Advisory required a Form 14b from assigned worker's compensation doctor when maximum medical improvement has been declared by employer. Furthermore Dr. Abu-Ata has not provided a medical rating and release required under SCWCC Regulatory Advisory Form 14b. Respondents are seeking to deceive this Court with trickery by only submitting portions of the transcript from May 21, 2015 hearing and not the entire document which verify distortions. Furthermore Appellant verifications of distortions are evident in Respondents' facts pertaining to Form 30 dated August 25, 2015, Defendants' Reply To Claimant's Motion To Include Appellant's Exhibit To The Form 30 dated October 9, 2015 and disability payments from Liberty Mutual and Aetna Ins. Since SCWCC Appellate Panel's Decision and Order dated February 26, 2016 has declared that no disability was paid. Additional distortion by Respondents is verified by a reminder letter of a June 20, 2014 doctor appointment with assigned worker's compensation doctor, Dr. Abu-Ata from Nurse Kelly Wells dated June 9, 2014 therefore discredit MMI on October 23, 2013 by Amazon.Com, DEDC, LLC and American Zurich Ins.

Appellant is requesting that Court of Appeals reverse and remand the Decision and Order by South Carolina Worker's Compensation Commission due to proven and factual distortions which have violated Appellant's rights to a fair hearing.

December 12, 2016



Clarence B. Jenkins Jr.

Clarence B. Jenkins Jr.

945 Wire Rd.

Neeses, South Carolina 29107

(803) 263-4514

Pro Se Appellant

Certificate of Service

I hereby certify that a true copy of the above documents was served upon the attorney of record, Attorney J. Russell Goudelock and Helen Hiser for the Respondents by regular first class mail by United States Post Office to address:

PO Box 12519 Columbia, SC 29211-2519

on (date) December 12, 2016

Clarene B. Ford  
Signature

December 12, 2016  
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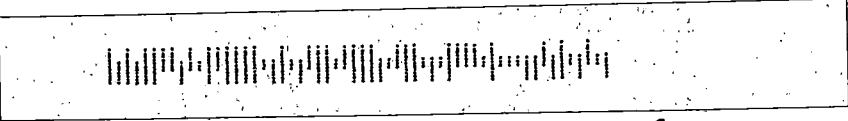
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