

IN THE  
SOUTH CAROLINA COURT OF APPEALS

Appellate Case NO. \_\_\_\_\_  
WCC File NO: 14/0083

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Terry McCall, Pro Se  
Appellant

vs.

Trojan Labor/Hire Quest LLC.  
And

Ace American Insurance Company  
Respondent

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DEC 12 2016

SC Court of Appeals

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"Appeal Brief"

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Date of Hearing: August 28, 2015

ORDER Filed: February 24, 2016

Appeal To Full Commission / Request  
to waive filing fee (Form 32) "Rejected"  
March 29, 2016

Timely  
Appeal Inadvertently taken to Court of  
Common Pleas, Richland County April 19, 2016

Motion Hearing To Remove Appeal from Court  
of Common Pleas held 11-10-2016

Timely Appeal taken to Court of Appeals

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## Statements of Issue on Appeal

1). The Appellant raises the issue that the Chair Person for the South Carolina Workers Compensation Commission (Rejected) the form 32 waiving the filing fees March 29, 2016, denying him his right to Appeal the Single Commissioner's denial of benefits in order filed February 24, 2016.

The Appellant argues his incarcerated indigent status at the time along with financial proof should have been appropriate enough for the Chair Person to grant the waiving filing fee on form 32. Especially when the Chair Person used the same indigency financial proof status forms "previously" in a motion filed for reconsideration "granted" the Appellant argues the Chair Person only rejected his form 32 for Appeal (to Block his Appeal.)

The Appellant argues the Prison Litigation Act was offered and could have been used, in order to collect the funds to pay the filing fees. Therefore, the denial was un-constitutional and the procedure used is un-constitutional. Because it offers no in forma pauperis procedure for inmates. However any other South Carolina Courts offers and indigent inmate to proceed in forma pauperis when indigent.

2). The Appellant argues he "Inadvertently" Timely Appealed to the incorrect Court of Common Pleas (Filed: April 19, 2016). Appealing the Chair Person's rejecting his form 32 to waive filing fees to allow him to Appeal to the Full Commission, to review the single Commissioner's denial of benefits. Order Filed February 24, 2016

3). The Appellant was heard in the Court of Common Pleas 11-10-2016 on motion to withdraw his Appeal / And by Respondent's Motion to Dismiss Appellant's Appeal from Court of Common Pleas. Motion for both parties were granted, Appeal removed from Court of Common Pleas.

3). The Appellant argues the Chair Person Never informed him where And Appeal for denial/rejection of form 32 was to be taken denying him due process. And Only due to his lock down status at his prison, Using the outdated S.C. codes of laws statutes, directing Appeals to be taken to the Court of Common Pleas. Is the Only reason the Appeal was Inadvertently Placed in Court of Common Pleas. However Appellant has made All good faith efforts to timely Appeal this case. See Attachments: Affidavits from several Inmates to whom witnessed Appellant in lock down status forced to use out dated S.C. Codes of Laws, statutes.

4). The Appellant argues the Court of Appeals has the appropriate In forma pauperis procedure available for indigent inmates. And believes the Court of Appeals should review his Appeal.

5). The Appellant argues the Single Commissioner Erred, prejudiced the Claimant when the Commissioner failed to include Exhibit 1 from the Claimant in his decision to deny benefits.

See: Transcript Pg \_\_\_\_\_ Denial of Due Process  
See: employees APA Pgs 142-186 GHS

6). The Appellant argues the Chair person Erred, And Prejudiced the Appellant by rejecting to waive filing fees, Form 32, in order for Appellant to move forward on motion for Newly Discovered evidence, where Appellant discovered the (Carrier) Respondent, mailed subpoena for medical Records of claimant, to the wrong numeral Address Denying the Appellant the right to be heard on All his medical records. After Appellant had to retrieve them when he could due to his inability of incarceration. This denied Appellant Due Process to A Fair hearing.

7) The Appellant argues the "single" Commissioner's Findings/decision denying benefits, were not based on Any Law/Case Law other than a General denial. According to Law this denies the Appellant due process in order to Appeal A Proper ruling.

8) The Appellant argues the Commissioner erred and denied him due process to a fair decision, when the Commissioner rejected using Claimant's Exhibit 1 Medical Records in making his ruling in the order. After the Medical records were admitted into evidence without objection at hearing 8-28-15.

9) The Appellant argues the Commission Chair Person, erred when rejecting to allow him to proceed on newly discovered evidence motion. Rejecting form 32 to waive filing fees, when he was indigent.

10) The Appellant argues the Commissioner's finding and decision was not based on Any statute, substantial Law, evidence other than general denial, and has no basis for supporting his denial.

11) The Appellant argues the Carrier/Commissioner Judicial Department for S.C workers Compensation denied due process, and equal protection to the Appellant, when they cancelled claim # 141462 for injury date June 30, 2014, and did not return Claimant At All And combined both injury dates June 30, July 4, 2014 into the process of using one claim # 1410883 the Appellant knew nothing about this process.

12) The Respondents never presented Any testimony, evidence, witnesses, supporting their allegations for denial that the Appellant's injuries never occurred and arose out of the course of employment. Or that Appellant did not report injury in a timely manner.

- 13). The Appellant argues the Commissioner Erred when he allowed Respondents Counsel to enter "Non-convictions for impeachment purposes, without first conducting a hearing establishing a basis for Admitting evidence. By failing to use the balancing test to determine whether probative value out weighs the prejudicial effect." Admitted Records of False Information to Police  
See: Sled Arrest record Pg 12-13, Transcript Pg 36-39
- 14). The Appellant argues the Commissioner Erred when stating <sup>in</sup> the Order; injuries were no greater than when he began on the job in his final Order, where the Claimants Exhibit 1 Medical records reflect, Pain localized in more areas than one, Pain greater than before injuries, And where claimant was written out of work on short note due to inability to work, because of greater pain. See: Claimants Exhibit 1
- 15). The Appellant argues Commissioner Erred deciding injury was not work related, where APA file Pg 165, (History of Complaint) and on Pg. 166 Under Mechanism of Injury, reflects Old work related injury June 2014. Pages 142-168- of APA file were never reviewed by commissioner, Because these Pages of medical records reveal Claimant suffered on the job injuries June 30, July 4<sup>th</sup>, 2014.
- 16). The Appellant argues the Commissioner Erred where he failed to enter any injuries to "right elbow, neck in his final decision that were plead on the form 50.
- 17). The Appellant argues the Commissioner, Gene McCaskill Unsupportedly denied All his motions without reviewing them, And Commissioner Chair Person rejected form 32 waiving filing fee for these motions, where medical status was provided only to block review, No other real basis.
- 18). The Appellant argues the transcript (Pg. 8 line 21-25) is alleged claimant filed An Amendment to form 50 (Pg. 9 line 1-12). The Appellant Alleges he filed a separate form 50, for June 30, 2014 injuries, received A claim# 141462. On (Page 9) in Transcript line 10-12

The Carrier's Respondent's Counsel states "Quite It is unclear if Appellant/claimant on February 7th, 2015 Amended another form 50 to bring in the right elbow as well as left foot." The Commissioner was never fully advised of All the Injuries nor was he clear as to the Amendments and All claims, and claim numbers. Neither was the "Respondent's Counsel" or the letter for Notice of Cancellation dated September 4th, 2014 would not have been submitted, to cancel out claim # 1411462,

the Appellant argues no where in the file did the respondents timely respond to the claim # 1411462. And the reason the S.C. Workers Compensation Commission cancelled this claim # was because, the Respondents were in Default, failing to timely file a response to the claim # 1411462 in 30 days. The Appellant alleges the "Commissioner" Judicial Dept is withholding the Form 50 Alleging June 30, 2014 injuries, because without a Form 50 filed by the Respondents to Appellant's Form 50, claim # 1411462, they were in Default, this is enough Ambiguous deficiencies to establish a New Hearing, Reversing the Commissioner's order. How could there had been a claim # 1411462, without a Form 50 being filed, but Respondents mention nothing about this at the hearing. And Appellant did not know anything about this Notice of Cancellation letter, because it was forwarded to his retired Counsel Paul Rathke, with Joel Bieber-law firm, and Appellant never received it until the hearing was over 8-28-15. which was after discovered evidence. Denying Appellant a fair hearing.

## Arguments on Appeal.

- 1.) Denial of Due Process (should not have rejected form 32)
- 2.) Timely Appealed but inadvertently placed Appeal in the wrong court, after using out dated S.C. codes statutes while in prison dorm he was in, was on lock down unable to use the computer.
- 3.) Appellant was heard in Common Pleas on Appeal and some Motions 11-10-2016, A order allowing the Appeal to be withdrawn, and denial of motions dismissed was issued 11-10-2016.
- 4.) The Appellant argues the Chair Person never informed him where to Appeal the decision Rejecting Form 32 for his Appeal, therefore this was denial of due process, never placed on notice.
- 5.) The Appellant argues the S.C. Court of Appeals has the formular for accepting Appeals without filing fees for indigent prisoners, and should hear the Appeal being in good faith efforts were made, attempted to Appeal to the full commission by Appellant, Denied/Rejected because he is poor, Unconstitutionally unfair.
- 6.) The Appellant argues the Commissioner prejudiced him in his decision to deny benefits, when he excluded to include the claimants Exhibit 2 in his final order, Nothing concerning Exhibit 2, Medical records entered in at hearing 8-28-15 without objection, therefore this denied Appellant due process and his right to have the decision based on Exhibit 2 as well as the other evidence of Medical Records from G.H.S.

6). The Appellant Argues the Chair Person Erred / Prejudiced the claimant when he rejected form 82, to waive filing fees, On A Motion of Newly Discovered Evidence, where Appellant Presented material evidence proving Carrier / employer Attorneys mailed the subpoena for his medical Records from the Orthopedic Clinic, subpoenaing for his medical Records from the Orthopedic Clinic, to the incorrect Numerated Address, Mailed to 10 Edgewood Dr. And Not 13 Edgewood Dr. As it should have been, this denied Appellant his right to be treated fairly with medical records, Pertinent to granting him benefits.

7). The Commissioner's denied due Process, to Appellant when he failed to base his decision in his final Order off of some legal statute, Law, case Law, other than General denial with no basis of law, for his decision.

8). see: numeral (5) of Arguments on Appeal (same)

9). see: Above numeral (6) same.

10). see: Above numeral (7). same.

11). The Appellant argues the Carrier denied him due Process along with the S.C. Workers Compensation Commission by failing to inform him that claim # 14/1462 had been cancelled out in favor of claim # 14/0083 because Appellant should have been informed, so he could have had opportunity to prepare arguments on a Srock Claim.

12). The Appellant argues the Respondents Never Presented Any witnesses / testimony from anyone, refuting the accident did not arise out of the course of employment, or that the injury was not reported timely.

13) The Appellant Argues the Commissioner Erred when he Allowed Carriers Counsel AT hearing 8-28-15 to Admit evidence (Sled Arrest record), And testify to Non-convictions for impeachment purposes, failing to conduct a hearing to determine A basis whether probative value out weighs the prejudicial effect. see: sled record <sup>pgs.</sup> 12-13. Transcript See: pg. 36-39

14) The Appellant Argues Commissioner Erred, And Prejudiced him when stating by his order, injuries were no greater than when he began working on the job, where the claimants Exhibit 2 medical records, Dr. Chen ~~Lili~~ Lili reflects: Pain localized in more Areas than one, "short work note" excused from work due to greater pain. see: claimants Exhibit 1, Transcript pg 31 Medical Records Dr. Chen Lili

15) The Appellant argues Commissioner Erred denied due process, where he denied benefits, Based on testimony from Respondents Defense Counsel. stating injury was not work related and no medical evidence support such, where he failed to review APA file, pg. 165 "History of Complaint" and on pg. 166 Under Mechanism of Injury - reflects Old work related injury June 30, 2014 see: pages 142-168 of APA file), these records reveal on the job injuries, never observed by the commissioner.

16) The Appellant argues the Commissioner Erred when he denied benefits without, entertaining injuries to claimants right elbow, neck in his final decision/order, that were plead on form 30, Denial of Due Process

17) The Appellant argues Commissioner Gene McCaskill denied All motions with no Basis And failing to review them. Due to form 32, rejected for review

18), the Appellant argues the transcript of record reflects claimant filed Amendment to form 50. See: Pg. 8-9 (Pg. 8-line 21-25) but (Pg. 9 line 1-12) A separate claim # 14/1462 was issued out, but the record is unclear if on February 7<sup>th</sup>, 2015 Claimant Amended form 50 to bring in right elbow, and left foot. Commissioner was never fully advised of the injuries and could not make a proper decision for basing his denial of benefits. Failure to be treated equally of all injured body parts.

The Appellant argues no where in the file did respondents timely respond to claim # 14/1462, denying due process.

## Conclusions

The Appellant believes this Court should reverse the Single Commissioner's decision being, being material evidence "Claimant's Exhibit 1" was never used to determine his decision for benefits and never listed on the final order, by the Commissioner. As the Commissioner failed to review records where "injuries did arise out of the course of employment" and were reported timely, and where Due Process was denied to the Appellant, where subpoena for medical records by defense counsel was mailed to the wrong incorrect numerical address, and where the record does not support the Commissioner's decision. And where more convictions were assessed for impeachment purposes denying Appellant due process and equal protection to be treated equally and not prejudiced.

The Appellant believes the only fair way is to reverse this case for a re-hearing / or send back to full Commissioner demanding the Appeal be heard without payment of Filing fees, with Appellant providing proof of indigency, or as the Court deems just and proper.

Dated 12-9-2016

Richard, S.C.

S. Terry McCall

Terry McCall 233236  
Goodmay Corr. Inst.  
Dorm 3-25-B  
4556 Broad River Rd  
Columbia, S.C.  
29210

# Certificate of Service

I, Terry McCall certify that I have served the "Appeal" for S.C. workers Compensation Commission on the Parties below, by placing same in the United States Postal Mail Service, postage prepaid, Affixed, Forwarded to Address below:

Dated 12-9-2016

S Terry McCall  
Terry McCall 233236  
Goodman Corr. Inst  
Dorm 3 - 25-B  
4556 - Broad River Rd  
Columbia, S.C. - 29210

South Carolina Court of Appeals  
Jenny Abbott Kitchings, Clerk  
P.O. Box 11629  
Columbia, S.C.  
29211

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SC Court of Appeals

Collins @ Lacy - To: Jennifer Honeycutt, Esquire  
Attorneys @ Law  
P.O. Box 12487  
Columbia, S.C.  
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New Address

Terry McCall <sup>S.C.D.C.#</sup> 233236  
Goodman Correctional Inst,  
Dorm 3-25-B Side-  
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Columbia, S.C.  
29210

12-9-2016  
Date

Oral arguments requested  
20 minutes

In Re: Filing, "Motion To Proceed In Forma Pauperis, And  
Appeal Brief / Requesting Oral Arguments  
20 minutes Requested

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Dear Clerk of Court,

SC Court of Appeals

Find enclosed the Motion/Affidavit to Proceed  
In Forma Pauperis, "Appeal Brief" And documents, That  
Need filing. Please Place the Motion before the Judge  
for review immediately.

Return to me a clocked in copy of "All" documents  
for my records. And return me a copy.

This is a Pro Se filing And I've filed A Motion  
requesting the S.C.A.C. Rules be relaxed in this matter.

"This Appeal is not late", However it was just removed from  
the Court of Common Pleas After Inadvertently placing it  
in the incorrect court, Timely filed.

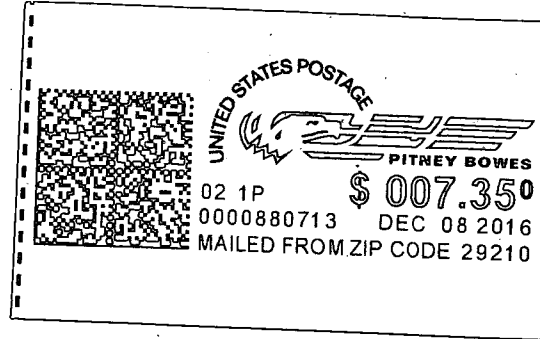
And "Rejected" by S.C. Workers Compensation Chair Person  
on form 32, to waive filing fees, to full commission. This  
is how it got to Court of Appeals. So lets file it  
And let the Judge decide.

(Return me filed copies)

S Terry McCall

Please

Jerry McCall 233206  
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