

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Workers Compensation Full Commission

Appellate Case #2016-001257

RECEIVED

JAN 11 2017

SC Court of Appeals

Michael Thompson, Employee, Claimant, Appellant,

v.

KMS Inc., Employer, and Bridgefield Casualty Insurance Company
c/o Summit Holdings Inc., Carrier, Respondent

[INITIAL] REPLY BRIEF OF APPELLANT

January 9, 2017



Michael Thompson
116 School Bus Rd.
West Columbia, SC 29172
(803) 318-1292
Pro Se

TABLE OF CONTENTS

Table of Authorities.....ii

Statement of Issues on Appeal.....1

Statement of Case.....1

Arguments/Facts

1. DID THE COMMISSION ERR IN FINDING THAT HE KNOWING AND WILLINGFULLY MISREPRESENT HIS PHYSICAL CONDITION?.....2

2. DID THE COMMISSION ERR IN FINDING THAT THE RESPONDENT RELIED ON THE MISREPRESENTATION AND THAT THE RELIANCE WAS A SUBSTANCIAL FACTOR IN HIRING OR PLACEMENT?2

3. DID THE COMMISSION ERR IN FINDING THAT THE APPELLANT SUFFERED BACK PROBLEMS FROM 2007-2013 THAT WERE RELATED TO THE BACKITSELF?.....3

4. DID THE COMMISSION ERR BY NOT FINDING THAT THE RESPONDENT HAD TIME AND OPPORTUNITY TO REACT TO ALL MEDICAL ISSUES FROM 2007-2013.....4

Conclusion.....5

TABLE OF AUTHORITIES

CASES

Cooper v. McDevitt Sreet & Co., 260 S.C.463, 196 S.E.2d 833 (1973).....1

APA'S

Appellant/Plaintiff2

Respondent/Defendent.....2,3

EXIBITS

Deposition of Joe Canfield (CEO,KMS).....2,3

Deposition of Wayne Frye.....3

Appellant Exhibit A(from Hearing Transcript Single Commissioner).....2

ORDERS

Decision and Order from Single Commissioner.....2

Transcripts

Hearing Transcript from Single Commissioner.....2

STATEMENTS OF ISSUES ON APPEAL

1. DID THE COMMISSION ERR IN FINDING THAT THE APPELLANT KNOWINGLY AND WILLFULLY MISREPRESENTED HIS PHYSICAL CONDITION?
2. DID THE COMMISSION ERR IN FINDING THAT RESPONDENT RELIED ON THE MISREPRESENTATION AND THAT THE RELIANCE WAS A SUBSTANCIAL FACTOR IN HIRING OR PLACEMENT?
3. DID THE COMMISSION ERR IN FINDING THAT THE APPELLANT SUFFERED BACK PROBLEMS FROM 2007 TO 2013 THAT WERE RELATED TO THE BACK ITSELF?
4. DID THE COMMISSION ERR IN FINDING THAT THE REpondent HAD THE OPPURTUNITY TO EXAMINE ANY MEDICAL RECORDS FROM 2007 -2013 AND DIDN'T HAVE OPPORTUNITY TO RELEASE OR CHANGE THE PLACEMENT OF THE APPEALENT?

STATEMENT OF THE CASE

This is an Appeal by Michael Thompson (Appellant) from the Decision and Order of The Full Commission of The South Carolina Workers Compensation Commission filed May 6, 2016. The claim came before the Workers compensation commission after the Respondents filed a Form 21 on July 4, 2015. The respondents assert Fraud under COOPER v. McDEVITT & STREET CO., 260 S.C. 463 196 S.E. 2d 833 (1973). The Appellant denies these charges.

The initial hearing was held on September 15, before Commissioner Avery B. Wilkerson, Jr.. The Commissioner filed his Decision and Order on November 18, 2015. On November 10, 2015 the Appellants lawyer withdrew from the case. On June 3, 2016 the Appellant, acting Pro Se, filed the Notice of Appeal.

ARGUEMENTS

1. DID THE COMMISSION ERR IN FINDING THAT THE APPELLANT KNOWINGLY AND WILL-

FULLY MISREPRESENTED HIS PHYSICAL CONDITION? The Appellant had a dissolved Minor back Strain, which leaves no existing conditions. The major factor that is used to separate Minor and Major Injuries. ; Lisa Bray/Human Resouces wanted only knowledge of restrictions. The Commissioner stated that the Appellant was referring to a fellow employee, when Lisa Bray was responsible for hiring me. See (Resp. APA pg. 76,H.T.,pgs.47-5, D.&O. #2,pg.7, Dep. of J.C. pg. 8,li. 21,22; Cooper v McDevitt & Street Co.196 S.E.2d 836, 260 S.C. 463 (SC, 1973)... "The rule that notice to an agent is notice to his principal and is not applicable unless the notice has reference to business in which the agent is engaged under authority from the principal.)

2. DID THE COMMISSION ERR IN FINDING THAT RESPONDENT RELIED ON THE MISREPRESENTATION AND THAT THE RELIANCE WAS A SUBSTANCIAL FACTOR IN HIRING OR

PLACEMENT? With no limitations and at 100% recovery from a minor injury , you have no reliance on placement,and Respondent testified it was not a factor. See (See Def. Ex. A, Dep. of J.C. pg. 10, li.3-6,24-25, pg.11,li.120-24,pg. 12,li.4; H.T. pg. 18, li.22-25,McLeod v Piggly Wiggly Carolina Co., 280 SC 466,313 S.E. 2d 40 (SC App., 1983)...Here, Mr. McLeod SEVERLY injured his Back 3 years after employment lifting a 60 pound box of beef. McLeod had been lifting 60 to 160 of such boxes 5 days a week, eight hours a day since employed. Prior to his employment He never complained of back problems and always met his production quota...; see also (Dep of K.F. pg. 9, li. 15-25;pg. 10;Resp. APA pg. 76)

ARGUMENTS

3. DID THE COMMISSION ERR IN FINDING THAT THE APPELLANT SUFFERED BACK PROBLEMS

FROM 2007-2013 THAT WERE RELATED TO THE BACK ITSELF? The Appellant asserts no medical evidence relates to seeking or being treated for issues CAUSED BY THE BACK. A Medical Profile from from the Appellants Primary Doctor is not marked clearly as caused by the back. Appellant never referenced the back strain on the Profile. See (Def. APA pgs 12,13; H.T., pg. 39,li.2-22,pg 40,li.1-13). In 2013 the Appellant was diagnosed with Sleep Apnea, the Registration Form asked what Symptoms related to the disorder was the Appellant having? Appellant cited backaches and pains due as a symptom (Def APA pgs. 39-40; McLeod v Piggly Wiggly Carolina Co.,280 SC 466, 313 S.E. 2d 40 (SC App., 1983)...Therefore the Remaining issue for our determination is weather Piggly Wiggly has shown by a preponderance Of the evidence that there was a casual connection between the false representation and the Injury, the Hearing Commissioner, the Full Commission and Circuit Court made a factual finding that there was no such casual connection. McLeod had worked for 3 years for Piggly Wiggly lifting many 60 pound boxes per day without any injury. Prior that McLeod, had preformed heavy Labor for other employers over a 10 year period with only one min. injury. He also completely recovered from the injuries sustained in 2 separate car accidents. There is substantial evidence to support the Circuit Courts decision concerning liability which affirms the findings of the hearing Commissioner and the Full Commission.)

ARGUMENTS

4. DID THE COMMISSION ERR IN FINDING THAT THE REpondent HAD THE OPPURTUNITY TO EXAMINE ANY MEDICAL RECORDS FROM 2007 -2013 AND DIDN'T HAVE OPPORTUNITY TO RELEASE OR CHANGE THE PLACEMENT OF THE APPELLANT? The Respondents knew or Had opportunity to review all Medical Records from 2006 thru 2010. The Appellant lost a fourth of his index finger at work while employed with the Respondent resulting in a Workers Compensation filing. The Appellant ended up resolving his employment due to his Anxiety Disorder/ PTSD. See (Dep. of W.F. pg. 7, li. 5-12). Appellant was rehired in 2012, diagnosed with Sleep Apnea in 2013, and finally was participating in Family Medical Leave of Absence (FMLA) in 2014 at which time the Repondents had ample opportunity to end my employment or make placement changes. See (Dep. of W.F. pg. 7, li. 5-12, Def. APA pgs. 21-24, 36-40).

CONCLUSION

With respect to The Honorable Court of Appeals, if it would find the assertion of Fraud
In the above case to be without merit or reason because of the weight of the evidence in
The Record as a whole.

September 29, 2016

Respectfully submitted,



Michael Thompson
116 Schoolbus Rd.
West Columbia SC 29172
(803) 318-1292
Pro Se

January 9, 2017

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Appeal from Richland County
Workers Compensation Commission

Appellate Case # 2016-001257

S.C. Court of Appeals
P.O. Box 11629
Columbia S.C. 29211

Michael Thompson, Employee, Claimant, Appellant,

v.

KMS, Inc., Employer, and Bridgefield Casualty Insurance
Company c/o Summit Holdings, Inc., Carrier, Respondent

RECEIVED

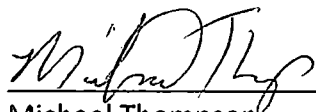
JAN 11 2017

SC Court of Appeals

PROOF OF SERVICE

I certify that I have served a copy of The Initial Reply Brief and Designation of Matter, by depositing it in the United States Mail, postage prepaid, on ~~January 9~~ ^{January 9} 2017, addressed to Nicolas I. Haigler, P.O. Box 11449, Columbia S.C., 29211.

January 9, 2017



Michael Thompson
116 Schoolbus Rd.
West Columbia, S.C. 29172
(803) 318-1292

FROM:

MICHAEL THOMPSON

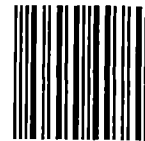
116 Schoolbus Rd

West Columbia SC

29172

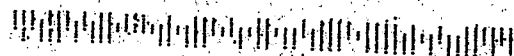


1000



29211

U.S. POSTAGE
PAID
WEST COLUMBIA, SC
29169
JAN 09, 17
AMOUNT
\$1.57
R2305K138193-15



TO:

S.C. Court of Appeals

P.O. Box 11629

Columbia SC

29211

RECEIVED

JAN 11 2017

SC Court of Appeals