

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE WORKERS' COMPENSATION COMMISSION

Gene McCaskill, Commissioner
T. Scott Beck, Commissioner
Susan S. Barden, Commissioner

82289
RECEIVED

Appellate Case No. 2016-002297

JAN 25 2017

Shawn Wier, Employee, Claimant, Respondent,

SC Court of Appeals

v.

AGY Holdings Corporation, Employer, and Great American Alliance Insurance Company,
Carrier, Appellants.

MOTION TO DISMISS

This motion is filed pursuant to Rule 240 of the South Carolina Appellate Court Rules, which governs motions and petitions generally. This is an appeal from an order that finds the case compensable but does not find the Claimant at maximum medical improvement. The Court should dismiss this appeal because such an order is not immediately appealable.

BACKGROUND

The Claimant filed a Form 50 Request for Hearing on August 31, 2015 (Attachment A) requesting temporary total benefits and medical care for the Claimant for injuries he sustained on the job on June 5, 2015.

On February 1, 2016, a hearing was held before Commissioner Melody James who issued an order on April 11, 2016 finding the case to be compensable under the SC Workers'

Compensation Act and awarded the Claimant temporary total benefits from August 19, 2015 and continuing as well as payment of all causally related medical expenses incurred from June 5, 2015 to the present and continuing (Attachment B). The Defendants filed an appeal to the SC Workers' Compensation Commission Appellate Panel on April 21, 2016. The SC Workers' Compensation Commission Appellate Panel heard the case on August 15, 2016 and affirmed the decision of the single commissioner in an Order dated October 14, 2016 (Attachment C).

An amended Order was issued on December 12, 2016 as the original order contained a scrivener's error as to the case caption (Attachment D). All three orders found that Claimant was in need of additional medical care and ordered Defendants to provide further care with Dr. Mickey Plymale as well as weekly workers' compensation benefits. The orders did not find Claimant at maximum medical improvement, did not yet award permanent disability and held all other issues in abeyance.

ARGUMENT

The issues that the parties argued to the Appellate Panel were the compensability of the claim, payment for past and future medical care, and entitlement to temporary total disability. The Appellate Panel found the case compensable, ordered provision of medical treatment, and payment of temporary total disability benefits.

This Order is not immediately appealable as it is not a final order. The Administrative Procedures Act generally limits a party's right to appeal an administrative case until after there has been a "final" decision. See S.C. Code Ann. §1-23-380. This term is a term of art: it describes an order that disposes of all of the issues in a case and leaves nothing to be done but to enforce by execution what has been determined. See Bone v. U.S Food Service, 404 S.C. 67, 83, 744 S.E.2d 552, 561(2013).

There is much more to be done in the present workers' compensation case. The Commission's decision specifically notes this; it orders provision of medical care and temporary total compensation and holds all other issues in abeyance including permanent disability benefits. The decision finds the case compensable but the decision does not find how long Claimant will receive medical care, temporary compensation, or any eventual permanent disability benefits and, thus, is an intermediate order and not a final order of the Commission.

CONCLUSION

This appeal should be dismissed. The dismissal should be without prejudice and with leave to re-file once the Commission has entered a final decision.

Respectfully Submitted,



William L. Smith, II, Bar No. 5226
Chappell Smith & Arden
PO Box 12330
Columbia, SC 29211
PH: (803) 929-3600
FAX: (803) 929-3604
Email: bsmith@csa-law.com
ATTORNEY FOR RESPONDENT

January 25, 2017



Claimant's Name: Shawn Weir SSN: 247-85-5408 Employer's Name: Advanced Glassfiber Yarns
Address: 2017 Honors Circle Address: 2556 Wagener Road
City: Graniteville State: SC Zip: 29829 City: Aiken State: SC Zip: 29801-957
Home Phone: (757) 867-3938 Work Phone: _____ Insurance Carrier: Strategic Comp Services
Preparer's Name: William L. Smith II Law Firm: Chappell, Smith and Arden, PA Preparer's Phone #: 803-929-3600

A claim for workers' compensation benefits is made based on the following grounds: _____ Date of Injury or Illness: 6/5/2015

Injury Illness Repetitive Trauma Occupational Disease Physical Brain Injury Concurrent Jurisdiction

1. The claimant sustained an injury to left arm/ elbow (Part(s) of Body Injured) on 6/5/2015 (Month/Day/Year) in Aiken county, state of SC. Body part(s) affected are: left arm/ elbow
2. Briefly describe how the accident occurred. Left arm hit the moving creel in the machine.
3. Both the claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of injury.
4. The relationship of employer and employee existed at the time of injury.
5. At the time of the injury the claimant was performing services arising out of and in the course of employment.
6. Notice of the accidental injury was given to the Employer on 6/5/2015 (Month/Day/Year) in the following manner:
Notified supervisor.

7. Due to injury, the claimant is in need of (check one):
 (a) medical examination and treatment for: _____
 (b) additional medical examination and treatment for: left arm/ elbow

8. Due to injury, the claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of:
6/06/15 to present and continuing.

9. Due to the Injury, the Claimant has permanent disability of the following nature and extent (check one):
 (1) General Disability: Total Partial (2) Specific Disability: Total Partial (3) Wage Loss

9a. A determination of permanent disability is premature at this time.

10. Due to the injury, the Claimant has a serious bodily disfigurement consisting of:

10a. At the time of the injury, the Claimant was paid weekly wages of Req F20, and demands accounting of days worked and wages earned as provided by law.

10b. Give names and addresses of all employers for whom the Claimant has worked since the date of the accident:
Advanced Glassfiber Yarns

11. Further grounds or unusual aspects of claim:
Claimant reserves the right to amend form 50

11a. List names and addresses of all physicians or other medical specialists who have seen or treated the Claimant as a result of the accident:
Aiken Regional Medical Center, Moore Orthopaedic Clinic

11b. To the best of your knowledge, did you have any prior permanent disability?
If yes, describe: None Known

12. Appropriate benefits as provided in the Act for the above grounds and other relief as the Workers' Compensation Commission may direct as just and proper.

13a. I am filing a claim. I am not requesting a hearing at this time. 14. Estimated time needed for hearing: 30 minutes

13b. I am requesting a hearing. A \$25 fee is required.

Mediation
 a. Mediation is requested to be ordered pursuant to Reg. 67-1801 B.
 b. Mediation is required pursuant to Reg. 67-1802.
 c. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.
 d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.

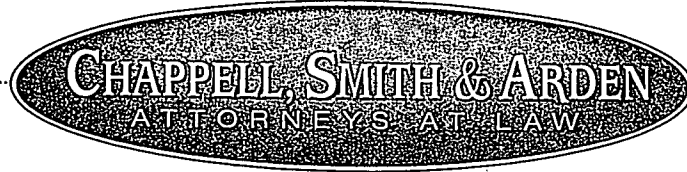
Questions regarding mediation may be submitted to mediation@wcc.sc.gov.

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to Strategic Comp Services
address PO Box 5789, Cincinnati, OH 45201 on the _____ day of August 2015, by first class postage certified mail personal service.

I verify the contents of this form are accurate and true to the best of my knowledge.
Preparer's Signature: [Signature] Title: Attorney Email: bsmith@csa-law.com Date: 8-31-15

Questions about the use of this form should be directed to the Claims Department at 803.737.5723. Refer to Regulations 67-204 through 67-211 and Regulations 67-601 through 67-615 as well as Reg. 67-1801.

Part of the



Licensed to practice
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August 31, 2015

Via Hand Delivery

Ms. Amy Bracy, Judicial Administrator
S.C. Workers' Compensation Commission
Post Office Box 1715
Columbia, SC 29202-1715

RE: Shawn Wier v. Advanced Glassfiber Yarns
WCC File No.:

Dear Ms. Bracy:

Please find enclosed a Form 50 pertaining to the above-referenced matter. I would appreciate your having this immediately filed and a hearing scheduled as soon as possible. Also enclosed is our firm check in the amount of \$25.00 for the filing fee.

By copy of this letter, sent via First Class Mail, I am serving a copy of the Form 50 on Strategic Comp Services, representative of the defendants.

Very truly yours,

William L. Smith II
bsmith@csa-law.com
Direct Dial: 803-509-5839

WLS/ceb
Enclosure
cc: Strategic Comp Services

A

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION
COMMISSION

Shawn Wier,

Claimant,

vs.

Advanced Glassfiber Yarns,

Employer,

Strategic Comp Services,

Carrier/Defendants.

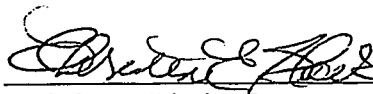
WCC FILE NO:

CERTIFICATE OF SERVICE

Christine E. Black, being first duly sworn, says that she is the paralegal for the Claimant's/Employee's attorney of Chappell, Smith & Arden located at 1510 Calhoun Street, Columbia, South Carolina; and, that on August 31, 2015, she forwarded a copy of the attached **Form 50** to:

Via First Class US Mail:

Strategic Comp Services
Post Office Box 5789
Cincinnati, OH 45201



Christine E. Black
Chappell, Smith & Arden
PO Box 12330, Columbia, SC, 29211
803-929-3600

A

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION
COMMISSION

Shawn Wier,

Employee/Claimant,

vs.

Advanced Glassfiber Yarns,

Employer,

Great American Alliance Insurance Company,

Carrier/Defendants.

DECISION AND ORDER

WCC FILE NO: 1510187

STIPULATIONS

The parties stipulated at the hearing to the following issues:

1. Notice of the hearing was timely and properly served on all parties of interest.
2. Venue was proper in Aiken County.
3. The parties agreed to a temporary average weekly wage of \$728.26 and a compensation rate of \$485.53. This rate is subject to further discovery and revision by subsequent order of this Commission.
4. The case is tried over the issues of compensability, temporary total disability, and medical care. The parties agree that if the case is found to be compensable, permanency is premature and not before the Commissioner at this time.

APA SUBMISSIONS

Pursuant to the Administrative Procedures Act, the following were submitted into evidence:

APA 1	Charlie Norwood VA Medical Center	09/21/15	1
APA 2	Moore Orthopaedic Clinic Ambulatory Surgery Center	06/16/15-07/06/15	2-8
APA 3	Aiken Regional Medical Center	06/05/15	9-38
APA 4	G4S Personnel File		39-109
APA 5	AGY New Hire form and Preplacement and Periodic History and Physical form		110-116
APA 6	Claimant's deposition (withdrawn)		
APA 7	Surveillance video in the possession of John Ratteree		
APA 8	Causation Statement of Dr. Mickey Plymale	12/02/15	117
APA 9	AGY personnel documents		118-130
APA 10	Deposition of Dr. Mickey F. Plymale	01/20/16	131-195

In addition, the original deposition transcript of Dr. Mickey Plymale was admitted into evidence.

STATEMENT OF THE CASE

Claimant contends he suffered a compensable injury on June 5, 2015 when his left elbow struck the creel while doffing a frame. Claimant worked light duty for a period of time until he was eventually terminated while on light duty. He seeks temporary total disability for the period of August 19, 2015 to the present and continuing. Claimant alleges that any determination of maximum medical improvement and permanent disability would be premature.

Defendants, on the other hand, deny that Claimant sustained a compensable injury. They allege that Claimant is not credible and they should not be responsible for payment of any medical expenses or payment of temporary total disability. Defendants deny any benefits are due under the Workers' Compensation Act.

Claimant is represented by William L. Smith, II of Columbia, SC and Defendants are represented by E. Ros Huff, Jr., of Columbia, SC. The Commission file was made a part of the record. This case was heard by the undersigned Commissioner on February 1, 2016, at which time the parties and their representatives appeared and evidence was received.

EVIDENCE OF THE CASE

Claimant is a 28 year old married male with six dependent children. Claimant has a 10th grade education but went on to obtain his GED. He served in the United States Army for eight years until he was medically discharged as a result of a head injury. Following Claimant's discharge, he worked for G4S Security until he obtained this job with AGY. Claimant began working at AGY in the spring of 2015 and performed his job working on the frames.

Claimant testified that he suffered his injury on June 5, 2015. On that day, he was doffing a frame and attempted to pick up a bobbin that was stuck. Claimant's hand slipped off the bobbin and his elbow hit the creel above it. Claimant was working the night shift at the time. Claimant testified that he reported his injury and was sent to Aiken Regional Medical Center.

After initial treatment at the emergency room, Claimant was referred to Dr. Mickey Plymale by the workers' compensation representatives of AGY. Claimant testified that he took his light duty work excuses to AGY and continued to work for them in a light duty capacity. Claimant testified that he worked until August 19, 2015 at which time he was advised that he had a choice of resigning or being separated because they were no longer able to accommodate his medical restrictions since

he was still a probationary employee. Claimant testified that he did not want to resign and was discharged because they could no longer accommodate his restrictions.

Claimant testified that shortly thereafter he became aware that his claim was denied and he was no longer allowed to return to Dr. Plymale. Claimant testified that as a veteran, he was able to get some medical treatment at the VA Medical Center. He was able to get an MRI of his elbow done and was attempting to get physical therapy although the scheduling the physical therapy was very slow. Claimant testified that he continues to have problems with his elbow and that he very much wants medical treatment for the elbow.

Defendants offered a surveillance videotape and questioned Claimant from still frame photographs of the videotape. The video showed Claimant at the community pool with his children and showed him lifting his children and tossing his children in the pool. Claimant was questioned from his deposition where he testified that the heaviest thing he had lifted since his accident was his one year old child. The videotape is at odds with Claimant's testimony. However, Claimant did explain that he had forgotten the incidents of lifting his children at the pool and that he had become much more careful about the use of his elbow after he obtained the MRI scan that showed a probable tear in his elbow. Prior to that time, he had been operating under the belief that he had a strain or significant bruising of the elbow.

The medical records were reviewed as evidence. The reports of Aiken Regional Medical Center show the Claimant was seen on June 5, 2015 "complaining of left elbow pain that began when he picked up an item at work tonight and hit his elbow on a hard piece of plastic". The reports indicate that Claimant was experiencing pain and swelling at the time of his evaluation. Thereafter, Claimant was sent to the Moore Orthopaedic Clinic where he came under the care of Dr. Mickey Plymale.

Dr. Plymale first saw Claimant on June 15, 2015. Dr. Plymale also took a history of Claimant injuring his elbow at work on June 5, 2015 when he hit his elbow on a piece of equipment. Dr. Plymale originally diagnosed Claimant with a left elbow contusion and placed him on light duty status for the next three weeks with no lifting over 10 pounds. Claimant returned to Dr. Plymale on July 6, 2015 for follow up of his left elbow injury. At that time, Dr. Plymale assessed continued left elbow pain, recommended an MRI of the elbow and continued Claimant on light duty and also recommended physical and occupational therapy. However, after this date the claim was denied and Claimant was never allowed to return to Dr. Plymale. Dr. Plymale did issue a causation statement (APA 8). Dr. Plymale provided an opinion within a reasonable degree of medical certainty that Mr. Wier's elbow problems were most probably caused by the incident at work occurring on June 5, 2015.

Claimant went to the Charlie Norwood VA Medical Center and was able to obtain an MRI scan on his own through the VA. This evaluation was done on September 21, 2015 and the impression was "diffuse signal or abnormality noted at the extensor tendon attachment to the lateral epicondyles likely representing tendinopathy or possible partial tear" (APA Pg. 1).

The deposition of Dr. Plymale was taken and was submitted as evidence. Dr. Plymale had never had the opportunity to review the MRI report prior to his deposition. In deposition, he indicated the MRI report substantiated his prior opinion and it was still his opinion that Claimant's lateral epicondylitis in the left elbow was caused by his injury involving the work accident where he struck his left elbow. He indicated treatment for this was injections, bracing, physical therapy, and anti-inflammatory medication. He indicated he would have continued the same work restrictions until Claimant's symptoms were lessened.

Defendants took the position that Claimant voluntarily quit his job and therefore was not entitled to temporary total disability because he removed himself from the workforce. However, a notice of discharge form from AGY was placed into evidence. That note is a discharge form dated August 19, 2015 and states, "unable to accommodate medical restrictions of a probationary employee". The form is signed by supervisor, A. Davis and by the employee, Shawn Wier. The surveillance videotape was also admitted into evidence and has been reviewed by the undersigned.

Based on the above stated evidence, the following are made as:

FINDINGS OF FACT

1. The parties have agreed to a temporary average weekly wage of \$728.26 and a compensation rate of \$485.53. This is subject to discovery and revision by subsequent order of the Commission.
2. The Claimant has met his burden of proof that he incurred an injury by accident to his left elbow that arose out and was within the course and scope of his employment. This finding is based on the Record as a whole including the corroborating medical records of Aiken Regional Medical Center, Dr. Plymale, and the MRI findings as well as Claimant's testimony.
3. Claimant's injury occurred during his shift on June 5, 2015. The injury was reported to his supervisor and he was referred to the hospital by his supervisor. The hospital records reflect the injury and indicate that Claimant had swelling in his left arm.
4. The Claimant was subsequently seen by an orthopedist, Dr. Mickey Plymale, on June 16, 2015. Dr. Plymale also documented swelling. Dr. Plymale placed the Claimant on light duty restrictions which were initially accommodated by the employer.

5. The employer terminated the Claimant on August 19, 2015 stating that they were unable to accommodate the medical restrictions of a probationary employee. This finding is based on testimony of the Claimant as well Claimant's Exhibit 1 which was the notice of discharge form from AGY.
6. Dr. Plymale had recommended an MRI which was not obtained until September 21, 2015 after the Claimant went to the VA Hospital for treatment.
7. The MRI reflected a diffuse signal abnormality noticed at the extensor tendon attachment to the lateral epicondyle, likely representing tendinopathy or possible partial tear. Small joint effusion was also noted (APA Pg. 1).
8. After review of the MRI, Dr. Plymale states that the results show or confirm a diagnosis of lateral epicondylitis and that he stood by his causation statement to a reasonable degree of medical certainty (Deposition of Dr. Plymale, Pg. 20).
9. The Defendants indicate the Claimant's activities contained in a video of his family's pool trip to the YMCA were not reflected truthfully in his deposition and this affects his credibility in whether he incurred an injury and whether he can receive temporary total payments. Although the Claimant did not reveal in his deposition that he picked up his children at the pool, he did reveal that he went to the pool with his family. Even though it is not an issue, it is noted the Claimant was forthcoming in his preplacement questionnaire about his pre-existing conditions. Also, as indicated, the Claimant's medical records are corroborative of his testimony. The testimony of the accident is credible and the Claimant has a condition that has been objectively observed by two providers and documented by MRI scanning.

10. The Claimant is entitled to payment of past medical treatment and the Defendants are to provide ongoing treatment with Dr. Plymale.
11. The Claimant was on light duty restrictions at the time of his termination. The Defendants' position is that the Claimant was not terminated, but instead, quit his employment. The Claimant's uncontroverted testimony is that he did not quit but was terminated. The notice of discharge documents the facts of the discharge were that the employer was "unable to accommodate medical restrictions of a probationary employee" (Claimant's Exhibit 1).
12. Dr. Plymale indicates in his deposition that after review of his MRI results, that the restrictions would have continued until his symptoms were less (Deposition of Dr. Plymale, Pg. 21). Dr. Plymale reviewed photographs from the pool video and indicated he would not have necessarily restricted the Claimant from doing the activities depicted in the video (Deposition of Dr. Plymale, Pg. 26).
13. The treating physician had issued restrictions for the Claimant. Although the Claimant exceeded his lifting restrictions and did not reveal that he had exceeded the restrictions, the physician put the restrictions in place. Although Dr. Plymale stated he would not indicate that the Claimant could not work after viewing the photographs, he did not state he was changing the light duty work restrictions. As such, those work restrictions remained in place. The Commission cannot substitute its judgment for that of the physician and change the medical restrictions.
14. The Claimant's inability to earn wages is tied to and related to his medical condition resulting from the injury. The Claimant is therefore entitled to temporary total disability from August 19, 2015, the date of his termination, through the present and continuing.

RULINGS OF LAW

1. Pursuant to Section 42-1-160, the Claimant proved that he sustained a compensable injury by accident arising out of and in the course of his employment.
2. Pursuant to Section 42-9-10, the Claimant is entitled to temporary total compensation from August 19, 2015 to the present and continuing.
3. Pursuant to Section 42-15-20, notice of the accident was given to the employer.
4. Pursuant to Section 42-15-60, the Claimant is entitled to payment of medical expenses from June 5, 2015 to the present and continuing. Dr. Plymale is designated as the authorized treating physician.

ORDER

IT IS THEREFORE ORDERED that the Defendants shall make the following payments:

1. Payment of temporary total compensation at the temporary rate of \$485.53 (this rate is subject to discovery and revision) from August 19, 2015 to the present and continuing.
2. Payment of all causally related medical expenses from June 5, 2015 to the present and continuing.
3. All other issues are held in abeyance.

AND IT IS SO ORDERED.



Commissioner Melody L. James

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid, in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

April 11, 2016

By: Tamara Morris, Administrative Assistant to Commissioner James

APPELLATE PANEL
DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION

Shawn Wier,
Employee/Claimant,

vs.

AGY Holding Corporation,

Employer,

and

Crawford & Company,

Carrier/Defendants.

DECISION AND ORDER

WCC FILE NO: 1510187

Appellate Panel Review held in Columbia, South Carolina on

August 15, 2016

Appellate Panel Decision and Order filed on October 14th, 2016

Appearances: Claimant represented by William L. Smith, II, Esquire
Defendants represented by E. Ros Huff, Jr., Esquire

STATEMENT OF THE CASE

This case came before the Single Commissioner pursuant to a Form 50 filed by the Claimant, Shawn Wier, and a Form 51 filed by Defendants. Claimant contended he suffered a compensable injury on June 5, 2015 when his left elbow struck the creel while doffing a frame. Claimant alleged entitlement to temporary total disability for the period of August 19, 2015 to the present and continuing. Claimant further alleged that he had not reached maximum medical improvement and was entitled to payment of past and future medical care.

Defendants denied that Claimant had sustained a compensable injury and denied any temporary total compensation or medical benefits.

The hearing was held before the Single Commissioner on February 1, 2016 in Columbia, South Carolina pursuant to timely and properly notice served on all parties. No objection was raised by either party regarding jurisdiction or venue.

On April 11, 2016, the Single Commissioner issued her Decision and Order, making the following Findings of Fact:

1. The parties have agreed to a temporary average weekly wage of \$728.26 and a compensation rate of \$485.53. This is subject to discovery and revision by subsequent order of the Commission.
2. The Claimant has met his burden of proof that he incurred an injury by accident to his left elbow that arose out of and was within the course and scope of his employment. This finding is based on the record as a whole, including the corroborating medical records of Aiken Regional Medical Center, Dr. Plymale, and the MRI findings as well as Claimant's testimony.

3. Claimant's injury occurred during his shift on June 5, 2015. This injury was reported to his supervisor and he was referred to the hospital by his supervisor. The hospital records reflect the injury and indicate that Claimant had swelling in his left arm.
4. The Claimant was subsequently seen by an orthopedist, Dr. Mickey Plymale, on June 16, 2015. Dr. Plymale also documented swelling. Dr. Plymale placed the Claimant on light duty restrictions which were initially accommodated by the employer.
5. The employer terminated the Claimant on August 19, 2015 stating that they were unable to accommodate the medical restrictions of a probationary employee. This finding is based on testimony of the Claimant as well as Claimant's Exhibit One which was the Notice of Discharge form from AGY.
6. Dr. Plymale had recommended an MRI which was not obtained until September 21, 2015 after the Claimant went to the VA Hospital for treatment.
7. The MRI reflected a diffuse signal abnormality noticed at the extensor tendon attachment to the lateral epicondyles, likely representing tendinopathy or possible partial tear. Small joint effusion was also noted (APA Pg. 1).
8. After review of the MRI, Dr. Plymale states that the results show or confirm a diagnosis of lateral epicondylitis, and that he stood by his causation statement to a reasonable degree of medical certainty (Deposition of Dr. Plymale, Pg. 20).
9. The Defendants indicated that the Claimant's activities contained in a video of his family's pool trip to the YMCA, were not reflected truthfully in his deposition, and this affects his credibility and whether he incurred an injury, and whether he can receive temporary total payments. Although the Claimant did not reveal in his deposition that he picked up his children at the pool, he did reveal that he went to the pool with his family.

Even though it is not an issue, it is noted the Claimant was forthcoming in his pre-placement questionnaire about his pre-existing conditions. Also, as indicated, the Claimant's medical records are corroborative of his testimony. The testimony of the accident is credible, and the Claimant has a condition that has been objectively observed by two providers, and documented by MRI scanning.

10. The Claimant is entitled to payment of past medical treatment and the Defendants are to provide ongoing treatment with Dr. Plymale.
11. The Claimant was on light duty restrictions at the time of his termination. The Defendants' position is that the Claimant was not terminated, but instead, quit his employment. The Claimant's uncontroverted testimony is that he did not quit but was terminated. The Notice of Discharge documents, the facts of the discharge were that the employer was "unable to accommodate medical restrictions of a probationary employee" (Claimant's Exhibit 1).
12. Dr. Plymale indicates in his deposition that after review of his MRI results, that the restrictions would have continued until his symptoms were less (Deposition of Dr. Plymale, Pg. 21). Dr. Plymale reviewed photographs from the pool video and indicated he would not have necessarily restricted the Claimant from doing the activities depicted (Deposition of Dr. Plymale, Pg. 26).
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remained in place. The Commission cannot substitute its judgment for that of a physician and change the medical restrictions.

14. The Claimant's inability to earn wages is tied to and related to his medical condition resulting from the injury. The Claimant is therefore entitled to temporary total disability from August 19, 2015, the date of his termination, through the present and continuing.

The Single Commissioner further made the following conclusions of law:

1. Pursuant to Section 42-1-160, the Claimant proved he sustained a compensable injury by accident arising out of and in the course of his employment.
2. Pursuant to Section 42-9-10, the Claimant is entitled to temporary total compensation from August 19, 2015 to the present and continuing.
3. Pursuant to Section 42-15-20, notice of the accident was given to the employer.
4. Pursuant to Section 42-15-60, the Claimant is entitled to payment of medical expenses from June 5, 2015 to the present and continuing. Dr. Plymale is designated as the authorized treating physician.

The Single Commissioner then ordered the Defendants to make the following payments:

1. Payment of temporary total compensation at the temporary rate of \$485.53 (this rate is subject to discovery and revision) from August 19, 2015 to the present and continuing.
2. Payment of all causally related medical expenses from June 5, 2015 to the present and continuing.

3. All other issues are held in abeyance.

Within the statutory period, the Defendants timely filed an Application for Review and Form 30 in the case setting forth their numerous grounds for review, copies of which were furnished to all interested parties. The appellant asserted the Single Commissioner erred:

1. Did the Hearing Commissioner err in finding as fact, concluding as a matter of law, and ordering that the Claimant sustained an injury by accident, the error being that this ruling is not supported by the evidence and the Claimant did not meet his burden of proof?
2. Did the Hearing Commissioner err in finding as fact, concluding as a matter of law, and ordering that the Claimant is entitled to medical treatment to be paid by the Defendants, the error being that this ruling is not supported by the evidence and the Claimant did not meet his burden of proof?
3. Did the Hearing Commissioner err in finding as fact, concluding as a matter of law, and ordering that the Claimant is entitled to temporary disability benefits, the error being that this ruling is not supported by the evidence, and the Claimant did not meet his burden of proof?
4. Did the Hearing Commissioner err in finding as fact, concluding as a matter of law, and ordering that Dr. Plymale coordinate treatment, the error being the Defendants have the right to direct medical treatment in this instance?

Briefs were submitted prior to oral arguments, which were presented before the Appellate Panel on August 15, 2015. All proper testimony has been taken. Such together with all documentary evidence has been delivered by oral argument to individual members of the Appellate Panel and has since been under study and consideration. In an appellate review, the

Appellate Panel shall, pursuant to SC Code Section 42-17-50 (1976 as amended), review the award, weigh the evidence as presented at the initial hearing and, if good grounds be shown therefore, make its own findings of fact and reach its own conclusions of law consistent with or inconsistent with those of the hearing commissioner. Counsel for the Claimant and for the Defendants appeared at the scheduled hearing to present oral arguments on behalf of the parties. A review of the record in its entirety shows that the evidence supports the Single Commissioner's findings and rulings. The testimony of the Claimant as well as the medical records from Aiken Regional Medical Center, Dr. Mickey Plymale, and the deposition of Dr. Mickey Plymale establish that Claimant suffered an injury to his left elbow while doffing. The evidence also shows the Claimant worked light duty until he was terminated by Defendants and his work restrictions remained in effect. The evidence further established that Claimant had not reached maximum medical improvement and remained disabled.

Having heard oral arguments on behalf of the parties, considered the briefs, and viewed the Record as a whole, the Appellate Panel affirms the Hearing Commissioner's order in full and makes one amendment to Finding of Fact No. 9. Therefore, the following are made as:

FINDINGS OF FACT

1. The parties have agreed to a temporary average weekly wage of \$728.26 and a compensation rate of \$485.53. This is subject to discovery and revision by subsequent order of the Commission.
2. The Claimant has met his burden of proof that he incurred an injury by accident to his left elbow that arose out of and was within the course and scope of his employment. This finding is based on the record as a whole, including the corroborating medical records of

Aiken Regional Medical Center, Dr. Plymale, and the MRI findings as well as Claimant's testimony.

3. Claimant's injury occurred during his shift on June 5, 2015. This injury was reported to his supervisor and he was referred to the hospital by his supervisor. The hospital records reflect the injury and indicate that Claimant had swelling in his left arm.
4. The Claimant was subsequently seen by an orthopedist, Dr. Mickey Plymale, on June 16, 2015. Dr. Plymale also documented swelling. Dr. Plymale placed the Claimant on light duty restrictions which were initially accommodated by the employer.
5. The employer terminated the Claimant on August 19, 2015 stating that they were unable to accommodate the medical restrictions of a probationary employee. This finding is based on testimony of the Claimant as well as Claimant's Exhibit One which was the Notice of Discharge form from AGY.
6. Dr. Plymale had recommended an MRI which was not obtained until September 21, 2015 after the Claimant went to the VA Hospital for treatment.
7. The MRI reflected a diffuse signal abnormality noticed at the extensor tendon attachment to the lateral epicondyles, likely representing tendinopathy or possible partial tear. Small joint effusion was also noted (APA Pg. 1).
8. After review of the MRI, Dr. Plymale states that the results show or confirm a diagnosis of lateral epicondylitis, and that he stood by his causation statement to a reasonable degree of medical certainty (Deposition of Dr. Plymale, Pg. 20).
9. The Defendants indicated that the Claimant's activities contained in a video of his family's pool trip to YMCA, were not reflected truthfully in his deposition, and this affects his credibility and whether he incurred an injury, and whether he can receive

temporary total payments. Although the Claimant did not reveal in his deposition that he picked up his children at the pool, he did reveal that he went to the pool with his family. Even though it is not an issue, it is noted the Claimant was forthcoming in his pre-placement questionnaire about his pre-existing conditions. Also, as indicated, the Claimant's medical records are corroborative of his testimony. The testimony of the accident is credible, and the Claimant has a condition that has been objectively observed by two providers, and documented by MRI scanning. Notwithstanding any inconsistency, after review of all the evidence, we believe Claimant more than we doubt him.

10. The Claimant is entitled to payment of past medical treatment and the Defendants are to provide ongoing treatment with Dr. Plymale.
11. The Claimant was on light duty restrictions at the time of his termination. The Defendants' position is that the Claimant was not terminated, but instead, quit his employment. The Claimant's uncontroverted testimony is that he did not quit but was terminated. The Notice of Discharge documents, the facts of the discharge were that the employer was "unable to accommodate medical restrictions of a probationary employee" (Claimant's Exhibit 1).
12. Dr. Plymale indicates in his deposition that after review of his MRI results, that the restrictions would have continued until his symptoms were less (Deposition of Dr. Plymale, Pg. 21). Dr. Plymale reviewed photographs from the pool video and indicated he would not have necessarily restricted the Claimant from doing the activities depicted (Deposition of Dr. Plymale, Pg. 26).

13. The treating physician had issued restrictions for the Claimant. Although the Claimant exceeded his lifting restrictions and did not reveal that he had exceeded the restrictions, the physician put the restrictions in place. Although Dr. Plymale stated that he would not indicate that the Claimant could not work after viewing the photographs, he did not state he was changing the light duty work restrictions. As such, those work restrictions remained in place. The Commission cannot substitute its judgment for that of a physician and change the medical restrictions.
14. The Claimant's inability to earn wages is tied to and related to his medical condition resulting from the injury. The Claimant is therefore entitled to temporary total disability from August 19, 2015, the date of his termination, through the present and continuing.

CONCLUSIONS OF LAW

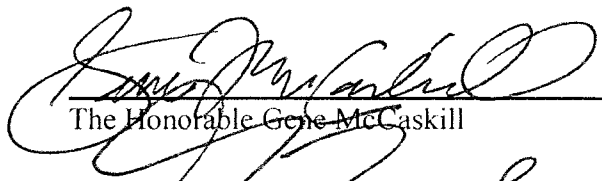
1. Pursuant to Section 42-1-160, the Claimant proved he sustained a compensable injury by accident arising out of and in the course of his employment.
2. Pursuant to Section 42-9-10, the Claimant is entitled to temporary total compensation from August 19, 2015 to the present and continuing.
3. Pursuant to Section 42-15-20, notice of the accident was given to the employer.
4. Pursuant to Section 42-15-60, the Claimant is entitled to payment of medical expenses from June 5, 2015 to the present and continuing. Dr. Plymale is designated as the authorized treating physician.

ORDER

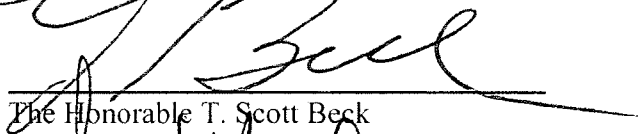
IT IS THEREFORE ORDERED that the Decision and Order of the Single Commissioner filed on April 11, 2016 is hereby affirmed by the Appellate Panel with the amendment of Finding of Fact No. 9. We order Defendant to make the following payments:

1. Payment of temporary total compensation at the temporary rate of \$485.53 (this rate is subject to discovery and revision) from August 19, 2015 to the present and continuing.
2. Payment of all causally related medical expenses from June 5, 2015 to the present and continuing.
3. All other issues are held in abeyance.

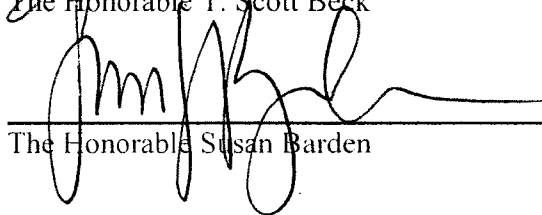
AND IT IS SO ORDERED.



The Honorable Gene McCaskill



The Honorable T. Scott Beck



The Honorable Susan Barden

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

By Kim Falls on October 14, 2016

APPELLATE PANEL
DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION

Shawn Wier,
Employee/Claimant,

vs.

AGY Holding Corporation,
Employer,

and

Great American Alliance Insurance Company,

Carrier/Defendants.

**AMENDED
DECISION AND ORDER**

WCC FILE NO: 1510187

Appellate Panel Review held in Columbia, South Carolina on

August 15, 2016

Appellate Panel Decision and Order filed on December 12, 2016

Appearances: Claimant represented by William L. Smith, II, Esquire
Defendants represented by E. Ros Huff, Jr., Esquire

STATEMENT OF THE CASE

This case came before the Single Commissioner pursuant to a Form 50 filed by the Claimant, Shawn Wier, and a Form 51 filed by Defendants. Claimant contended he suffered a compensable injury on June 5, 2015 when his left elbow struck the creel while doffing a frame. Claimant alleged entitlement to temporary total disability for the period of August 19, 2015 to the present and continuing. Claimant further alleged that he had not reached maximum medical improvement and was entitled to payment of past and future medical care.

Defendants denied that Claimant had sustained a compensable injury and denied any temporary total compensation or medical benefits.

The hearing was held before the Single Commissioner on February 1, 2016 in Columbia, South Carolina pursuant to timely and properly notice served on all parties. No objection was raised by either party regarding jurisdiction or venue.

On April 11, 2016, the Single Commissioner issued her Decision and Order, making the following Findings of Fact:

1. The parties have agreed to a temporary average weekly wage of \$728.26 and a compensation rate of \$485.53. This is subject to discovery and revision by subsequent order of the Commission.
2. The Claimant has met his burden of proof that he incurred an injury by accident to his left elbow that arose out of and was within the course and scope of his employment. This finding is based on the record as a whole, including the corroborating medical records of Aiken Regional Medical Center, Dr. Plymale, and the MRI findings as well as Claimant's testimony.

3. Claimant's injury occurred during his shift on June 5, 2015. This injury was reported to his supervisor and he was referred to the hospital by his supervisor. The hospital records reflect the injury and indicate that Claimant had swelling in his left arm.
4. The Claimant was subsequently seen by an orthopedist, Dr. Mickey Plymale, on June 16, 2015. Dr. Plymale also documented swelling. Dr. Plymale placed the Claimant on light duty restrictions which were initially accommodated by the employer.
5. The employer terminated the Claimant on August 19, 2015 stating that they were unable to accommodate the medical restrictions of a probationary employee. This finding is based on testimony of the Claimant as well as Claimant's Exhibit One which was the Notice of Discharge form from AGY.
6. Dr. Plymale had recommended an MRI which was not obtained until September 21, 2015 after the Claimant went to the VA Hospital for treatment.
7. The MRI reflected a diffuse signal abnormality noticed at the extensor tendon attachment to the lateral epicondyles, likely representing tendinopathy or possible partial tear. Small joint effusion was also noted (APA Pg. 1).
8. After review of the MRI, Dr. Plymale states that the results show or confirm a diagnosis of lateral epicondylitis, and that he stood by his causation statement to a reasonable degree of medical certainty (Deposition of Dr. Plymale, Pg. 20).
9. The Defendants indicated that the Claimant's activities contained in a video of his family's pool trip to the YMCA, were not reflected truthfully in his deposition, and this affects his credibility and whether he incurred an injury, and whether he can receive temporary total payments. Although the Claimant did not reveal in his deposition that he picked up his children at the pool, he did reveal that he went to the pool with his family.

Even though it is not an issue, it is noted the Claimant was forthcoming in his pre-placement questionnaire about his pre-existing conditions. Also, as indicated, the Claimant's medical records are corroborative of his testimony. The testimony of the accident is credible, and the Claimant has a condition that has been objectively observed by two providers, and documented by MRI scanning.

10. The Claimant is entitled to payment of past medical treatment and the Defendants are to provide ongoing treatment with Dr. Plymale.
11. The Claimant was on light duty restrictions at the time of his termination. The Defendants' position is that the Claimant was not terminated, but instead, quit his employment. The Claimant's uncontroverted testimony is that he did not quit but was terminated. The Notice of Discharge documents, the facts of the discharge were that the employer was "unable to accommodate medical restrictions of a probationary employee" (Claimant's Exhibit 1).
12. Dr. Plymale indicates in his deposition that after review of his MRI results, that the restrictions would have continued until his symptoms were less (Deposition of Dr. Plymale, Pg. 21). Dr. Plymale reviewed photographs from the pool video and indicated he would not have necessarily restricted the Claimant from doing the activities depicted (Deposition of Dr. Plymale, Pg. 26).
13. The treating physician had issued restrictions for the Claimant. Although the Claimant exceeded his lifting restrictions and did not reveal that he had exceeded the restrictions, the physician put the restrictions in place. Although Dr. Plymale stated that he would not indicate that the Claimant could not work after viewing the photographs, he did not state he was changing the light duty work restrictions. As such, those work restrictions

remained in place. The Commission cannot substitute its judgment for that of a physician and change the medical restrictions.

14. The Claimant's inability to earn wages is tied to and related to his medical condition resulting from the injury. The Claimant is therefore entitled to temporary total disability from August 19, 2015, the date of his termination, through the present and continuing.

The Single Commissioner further made the following conclusions of law:

1. Pursuant to Section 42-1-160, the Claimant proved he sustained a compensable injury by accident arising out of and in the course of his employment.
2. Pursuant to Section 42-9-10, the Claimant is entitled to temporary total compensation from August 19, 2015 to the present and continuing.
3. Pursuant to Section 42-15-20, notice of the accident was given to the employer.
4. Pursuant to Section 42-15-60, the Claimant is entitled to payment of medical expenses from June 5, 2015 to the present and continuing. Dr. Plymale is designated as the authorized treating physician.

The Single Commissioner then ordered the Defendants to make the following payments:

1. Payment of temporary total compensation at the temporary rate of \$485.53 (this rate is subject to discovery and revision) from August 19, 2015 to the present and continuing.
2. Payment of all causally related medical expenses from June 5, 2015 to the present and continuing.

3. All other issues are held in abeyance.

Within the statutory period, the Defendants timely filed an Application for Review and Form 30 in the case setting forth their numerous grounds for review, copies of which were furnished to all interested parties. The appellant asserted the Single Commissioner erred:

1. Did the Hearing Commissioner err in finding as fact, concluding as a matter of law, and ordering that the Claimant sustained an injury by accident, the error being that this ruling is not supported by the evidence and the Claimant did not meet his burden of proof?
2. Did the Hearing Commissioner err in finding as fact, concluding as a matter of law, and ordering that the Claimant is entitled to medical treatment to be paid by the Defendants, the error being that this ruling is not supported by the evidence and the Claimant did not meet his burden of proof?
3. Did the Hearing Commissioner err in finding as fact, concluding as a matter of law, and ordering that the Claimant is entitled to temporary disability benefits, the error being that this ruling is not supported by the evidence, and the Claimant did not meet his burden of proof?
4. Did the Hearing Commissioner err in finding as fact, concluding as a matter of law, and ordering that Dr. Plymale coordinate treatment, the error being the Defendants have the right to direct medical treatment in this instance?

Briefs were submitted prior to oral arguments, which were presented before the Appellate Panel on August 15, 2015. All proper testimony has been taken. Such together with all documentary evidence has been delivered by oral argument to individual members of the Appellate Panel and has since been under study and consideration. In an appellate review, the

Appellate Panel shall, pursuant to SC Code Section 42-17-50 (1976 as amended), review the award, weigh the evidence as presented at the initial hearing and, if good grounds be shown therefore, make its own findings of fact and reach its own conclusions of law consistent with or inconsistent with those of the hearing commissioner. Counsel for the Claimant and for the Defendants appeared at the scheduled hearing to present oral arguments on behalf of the parties. A review of the record in its entirety shows that the evidence supports the Single Commissioner's findings and rulings. The testimony of the Claimant as well as the medical records from Aiken Regional Medical Center, Dr. Mickey Plymale, and the deposition of Dr. Mickey Plymale establish that Claimant suffered an injury to his left elbow while doffing. The evidence also shows the Claimant worked light duty until he was terminated by Defendants and his work restrictions remained in effect. The evidence further established that Claimant had not reached maximum medical improvement and remained disabled.

Having heard oral arguments on behalf of the parties, considered the briefs, and viewed the Record as a whole, the Appellate Panel affirms the Hearing Commissioner's order in full and makes one amendment to Finding of Fact No. 9. Therefore, the following are made as:

FINDINGS OF FACT

1. The parties have agreed to a temporary average weekly wage of \$728.26 and a compensation rate of \$485.53. This is subject to discovery and revision by subsequent order of the Commission.
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CONCLUSIONS OF LAW

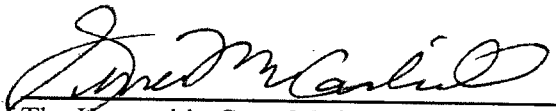
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3. Pursuant to Section 42-15-20, notice of the accident was given to the employer.
4. Pursuant to Section 42-15-60, the Claimant is entitled to payment of medical expenses from June 5, 2015 to the present and continuing. Dr. Plymale is designated as the authorized treating physician.

ORDER

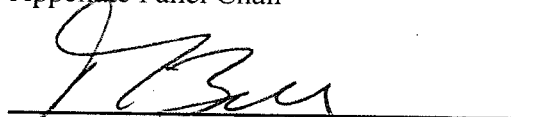
IT IS THEREFORE ORDERED that the Decision and Order of the Single Commissioner filed on April 11, 2016 is hereby affirmed by the Appellate Panel with the amendment of Finding of Fact No. 9. We order Defendant to make the following payments:

1. Payment of temporary total compensation at the temporary rate of \$485.53 (this rate is subject to discovery and revision) from August 19, 2015 to the present and continuing.
2. Payment of all causally related medical expenses from June 5, 2015 to the present and continuing.
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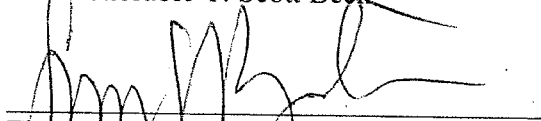
AND IT IS SO ORDERED.



The Honorable Gene McCaskill
Appellate Panel Chair



The Honorable T. Scott Beck



The Honorable Susan Barden

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

By Eugenia Hollmon on December 12, 2016

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE WORKERS' COMPENSATION COMMISSION

Gene McCaskill, Commissioner
T. Scott Beck, Commissioner
Susan S. Barden, Commissioner

Appellate Case No. 2016-002297

Shawn Wier, Employee, Claimant, Respondent

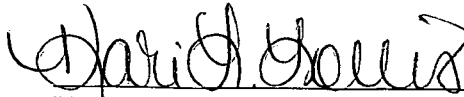
v.

AGY Holdings Corporation, Employer, and Great American Alliance Insurance Company,
Carrier, Appellants.

PROOF OF SERVICE

The undersigned hereby certifies that on the date indicated below, she served counsel for the Appellant with a copy of the *MOTION TO DISMISS* by mailing copies of the same by United States Mail with first class postage prepaid to the following address:

E. Ros Huff, Jr.
Shelby G. Hapeshis
Huff & Hapeshis, LLC
PO Box 1935
7244 Woodrow Street
Irmo, SC 29063



Kari L. Lollis

January 25, 2017

RECEIVED

JAN 25 2017

SC Court of Appeals

CHAPPELL, SMITH & ARDEN
ATTORNEYS AT LAW

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in South Carolina,
North Carolina,
Georgia and the
District of Columbia

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January 25, 2017

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JAN 25 2017

SC Court of Appeals

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

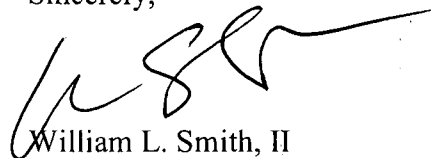
RE: Shawn Wier, Employee, Claimant, Respondent. V. AGY Holdings
Corporation, Employer, and Great American Alliance Insurance
Company, Carrier, Appellants
Appellate Case No. 2016-002297

Dear Ms. Kitchings:

Please find enclosed for filing the original and seven (7) copies of a *MOTION TO DISMISS* in connection to the above-referenced case. I have also enclosed a proof of service of this document on counsel for the Appellant and a check for \$25.00 to cover the cost of filing this motion.

I am enclosing a return envelope for your convenience in returning the additional filed copy to our office. Thank you for your attention to this matter. If you need any additional information, please do not hesitate to contact me.

Sincerely,



William L. Smith, II
Attorney for the Respondent
PH: 803-509-5839
Email: bsmith@csa-law.com

WLS/kil