THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

RECEIVED

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SC Court of Appeals

APPEAL FROM RICHLAND COUNTY

COURT OF COMMON PLEAS

L. CASEY MANNING, CIRCUIT COURT JUDGE

APPELLATE CASE NUMBER: 2017-000087

Leroy Bolden, ...Claimant/Respondent,

v.

Sun City Hilton Head Comm. Assoc., Employer, and Liberty Mutual Insurance Company, Carrier.....Appellants.

RESPONDENT'S MEMORANDUM SEEKING DISMISSAL OF APPEAL

By Notice of Appeal dated January 12, 2017, Appellants, Sun City Hilton Head Comm. Assoc. and Liberty Mutual Insurance Company, sought immediate review of the Honorable L. Casey Manning's December 15, 2016 order denying their SCRCP Rule 59(e) Motion to Alter or Amend his prior order reversing a ruling of the South Carolina Workers' Compensation Commission (Commission) and remanding the case for further proceedings. Following a preliminary review, this Court requested Appellants' counsel to "file a memorandum" analyzing the current appealability of Judge Manning's order. While counsel for Respondent, Leroy

Bolden, was not similarly instructed, he nonetheless sought the opportunity to address Appellants' contentions relative to the issue of appealability.

As confirmed by a review of their January 30, 2017 memorandum, Appellants essentially argue Judge Manning's December 15, 2016 order is immediately appealable, as: (a) it "deprives . . . [them] of a substantial right in this case"; and (b) they "will suffer great prejudice" through the remand process due to the lengthy duration of this litigation.

However, despite these assertions, Mr. Bolden respectfully submits the: (a) circuit court's remand of this matter to the commission for further proceedings precludes direct appeal to this Court; (b) operative order does not constitute "a final judgment" within the meaning of S.C. Code Ann. Section 1-23-390 (Supp. 2016), as the remand involves further action before the commission; (c) "affects the merits or deprives the appellants of a substantial right" standard prescribed by S.C. Code Ann. Section 14-3-330 (2017) is inapplicable in this instance; and (c) "the length of time this matter has been pending without finality" has no bearing on the question of immediate appealability.

FACTS

On November 7, 2000, Mr. Bolden sustained a compensable back injury, which prompted his receipt of temporary total disability compensation in conjunction with medical treatment through Appellants' designated physician. Upon his attainment of maximum medical improvement, the parties participated in a hearing before the single commissioner, who assessed his degree of permanent residual disability in a fashion that did not adequately address all pertinent evidence or the

contested issues. Although Mr. Bolden raised numerous exceptions to her February 7, 2003 ruling through a March 12, 2003 W.C.C. Form 30, the commission ultimately affirmed this order in its entirety on November 19, 2003.

By petition filed December 17, 2003, Mr. Bolden sought judicial review of the commission's ruling. Among other things, he challenged: (a) the adequacy of the commission's factual findings, maintaining the order failed to provide any explanation of the basis/rationale for its disability assessment; (b) the absence of any analysis relative to the significance/impact of material evidence contained in the hearing record (medical limitations, educational/vocational deficits and credibility); and (c) its failure to address various issues raised by his Form 30.

By order filed April 7, 2005, the Honorable Perry M. Buckner, III: (a) vacated the commission's order; (b) specifically identified several evidentiary components which were particularly relevant to the assessment of Mr. Bolden's residual disability; (c) concluded "meaningful consideration of this evidence – including an appraisal of Mr. Bolden's credibility, i.e. the weight afforded to his testimony – is essential to the resolution of the disputed issues"; (d) remanded this case to the commission with instructions to take "additional action consistent with [his] . . . Order, as well as applicable Commission Regulations"; and (e) held that "all further rulings in this matter shall contain not only detailed factual findings, but also thorough explanations of the rationale underlying . . . [the commission's] ultimate determination."

Citing several applicable commission regulations, Mr. Bolden sought to submit revised legal memoranda and participate in oral argument before the newly constituted (due to the departure of two previously serving commissioners) appellate

panel in accordance with Judge Buckner's order. When he was denied this relief, a second appeal was perfected with the Richland County Court of Common Pleas on February 2, 2007.

Notwithstanding this appeal, the Commission: (a) directed defense counsel to prepare a proposed order affirming the initial ruling; (b) declined to identify any rationale for this purported ruling; and (c) effectively abdicated its fact finding duty to defense counsel, who was simply instructed to "draw this order in conformance with the order from Judge Buckner." (See, Exhibit A).

In the aftermath of this post-appeal development, Mr. Bolden not only pursued reversal of the appealed order, with remand to the commission, but also alternatively prayed for "oral argument before a newly constituted Panel **or a de novo hearing before the single commissioner.**" (See, Exhibit B).

After considering the merits of Mr. Bolden's appeal, the circuit court determined:

> Although this Court recognizes the determination as to witness credibility is ultimately reserved for the Appellate Panel, inspection of the record firmly establishes: (a) the evidentiary hearing which spawned the current litigation took place more than 6.5 years ago; (b) neither the hearing commissioner nor the initial Appellate Panel (all of whom are no longer serving on the Commission) addressed the issue relative to Mr. Bolden's credibility; (c) **the new Appellate Panel similarly sought to defer (an[d]/or delegate) this determination**; and (d) the law of this case (i.e., Judge Buckner's Order) recognizes "a meaningful consideration of [the]. . . evidence – including an appraisal of Mr. Bolden's credibility. . . – is essential to the resolution of the disputed issues. . . ."

Given these unusual circumstances, including Mr. Bolden's request for a new hearing (rather than through the *sua sponte* process alleged by Appellants, the circuit court concluded "the interests of justice will be further served by a remand procedure,

which includes: (a) a *de novo* evidentiary hearing before a single commissioner; (b) entry of an order containing detailed factual findings, which thoroughly explain 'the rationale underlying . . . [any] determination'; and (c) a similarly detailed/analyzed assessment of the single commission's ruling in the event either party seeks review before the Appellate Panel." To facilitate this process, he ordered that one aspect of the remand would involve "allowing consideration of the current record, as well as any additional evidence submitted by the respective parties, by the single commissioner. . . ." These rulings were ultimately reaffirmed through the December 15, 2015 order denying Appellants' SCRCP Rule 59(e) motion.

LEGAL ANALYSIS

It has been "consistently held that an order of the circuit court remanding a case for additional proceedings before an administrative agency is not directly appealable." Montjoy v. Asten-Hill Dryer Fabrics, 316 S.C. 52, 446 S.E. 2d 618 (1994); Bone, supra at 558. In this regard, "the only relevant question here is whether or not the case has been remanded to the administrative agency." Bone, supra. at 561. As "all parties agreed that it was . . . [,] the order of remand is not appealable. Id.

Additionally, ". . . [o]nce the initial judicial branch appellate review of an agency decision is complete, further appellate review is governed by Section 1-23-390 . . . [,] which permits further appellate review only 'of a final judgment of the circuit court'" under the current circumstances. Martinez v. Spartanburg County, 406 S.C. 532, 753 S.E. 2d 436, 437 (2014). As repeatedly recognized by the Supreme Court, ". . . [a] final judgment disposes of the whole subject matter of the action or terminates a particular proceeding or action, leaving nothing to be done but to enforce

by execution what has been determined." Charlotte-Mecklenburg Hospital Authority v. South Carolina Department of Health and Environmental Control, 387 S.C. 265, 682 S.E. 2d 894, 895 (2010); Bone, supra. at 557.

As the circuit court's order "was not a final judgment . . . [it is] not appealable. . . ." Martinez, supra. Further, while there is no denying this litigation has spanned a lengthy period, the delay in achieving finality has no bearing on the issue of appealability. See, *Ex parte* South Carolina Property and Casualty Insurance Guaranty Association, 411 S.C. 501, 768 S.E. 2d 670 (2015).

While Appellants, relying on this Court's decision in Green v. City of Columbia, 311 S.C. 78, 427 S.E. 2d 685 (Ct. App. 1993), argue an interlocutory order of the circuit court which "affects the merits or deprives the appellant of a substantial right" is immediately appealable, the Supreme Court has held this criteria, which is derived from Section 14-3-330, does not regulate appealability in this context. Specifically, in Bone v. U.S. Food Service, 404 S.C. 67, 744 S.E. 2d 552, 559 (2013), the Court ruled that although the " 'affecting the merits' language . . . [endorsed by its decision in Chastain v. Spartan Mills, 228 S.C. 61, 88 S.E. 2d 836 (1955), which provides the basis for the Green determination,] was correct at the time . . . [this standard] did not survive the adoption of the" Administrative Procedures Act. Consequently, Appellants' reliance on this general appellate axiom is misplaced.

Accordingly, Mr. Bolden respectfully submits that as the circuit court's order is clearly not subject to immediate appellate review, the current appeal should be dismissed, without prejudice, pending the parties' ultimate receipt of a final judgment per Section 1-23-390.

Respectfully submitted,

By: _____

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ATTORNEY FOR RESPONDENT

Columbia, South Carolina
February 7, 2017

From: BCheeseboro@wcc.sc.gov
To: MCCANTS3RD@AOL.COM
Cc: msa6631@aol.com
Subject: Leroy Bolden vs. Sun City Hilton Head Comm. Assoc. (WCC: 0019585)
Date: Fri, 23 Feb 2007 12:51 PM

February 23, 2007

HEARING DATE: Remand Hearing on 1/24/07
WCC FILE NO. 0019585

CLAIMANT: Leroy Bolden
EMPLOYER: Sun City Hilton Head Comm. Assoc.
CARRIER: Liberty Mutual Group

ATTORNEY(P): Andrew N. Safran
ATTORNEY(D): Clarke W. McCants III

DIRECTIVES

Attorney MCants: please draft the order consistent with the below findings:

Please prepare a proposed order in this case affirming the findings of the Single Commissioner. Please draw this order in conformance with the order from Judge Buckner.

If you have any questions, please do not hesitate to call.

Andrea P. Roche, Commissioner
(803) 737-5678

Barbara D.B. Cheeseboro
SCWCC
(803) 737-5678

A

STATE OF SOUTH CAROLINA) COUNTY OF RICHLAND) Leroy Bolden,) Claimant/Appellant,) vs.) Sun City Hilton Head Comm. Assoc.,) Employer,) and) Liberty Mutual Insurance Company,) Carrier/Respondents.)	IN THE COURT OF COMMON PLEAS CIVIL ACTION NO.: 07-CP-40-984 CLAIMANT'S/APPELLANT'S MEMORANDUM IN SUPPORT OF PETITION FOR JUDICIAL REVIEW

STATEMENT OF THE CASE

This is an appeal from the January 3, 2007 Order of the South Carolina Workers' Compensation Commission (Commission), which: (a) denied Appellant's, Leroy Bolden's, Motion for Rehearing, with oral argument, in compliance with the remand instructions contained in the Honorable Perry M. Buckner, III's April 7, 2005 Order; (b) obviously misinterpreted the purpose of this Motion (to ensure oral argument per "applicable Commission Regulations", as envisioned by Judge Buckner's directive); and (c) characterized the denied Motion to involve "the merits of [this]. . . case."

In conjunction with this ruling, the Commission entered a second Order designating a new Appellate Panel (as two of three previous Panel members were no longer serving as commissioners), which forwarded counsel for Respondents an e-mail directive: (a) to "draw. . . [a proposed] Order in conformance with the Order from Judge Bucker"; and (b) which, among other things, delegated an essential element of Judge Buckner's remand instructions ("thorough explanations of the rationale underlying its ultimate determination. . . including an appraisal of Mr. Bolden's credibility, i.e., the weight afforded to his testimony") to counsel; and (c) completely failed to comply with Judge Buckner's rather

emphatic remand instructions, providing absolutely no indication as to the rationale for its resolution of various factual issues or de novo hearing before a single commissioner

In this regard, Mr. Bolden respectfully submits: (a) the Panel's refusal to afford additional oral argument is violative of "applicable Commission regulations", as well as the terms of Judge Buckner's Order; (b) its actions on remand are completely contrary to the nature/focus of Judge Buckner's ruling; and (c) this matter should be remanded to the Commission with explicit instructions mandating oral argument before a newly constituted Panel (as the temporal directive to counsel clearly indicates the current Panel is now predisposed to achieve a particular result in this instance).

FACTS

A. INJURY AND INITIAL MEDICAL TREATMENT

On November 7, 2000, he sustained a compensable back injury while performing duties arising out of and within the course and scope of his employment with Sun City Hilton Head Community Association.

After initially receiving treatment at Hilton Head Hospital and through the company physician, he was referred to Dr. Eugene A. Eline, Jr., an orthopaedic surgeon, for further evaluation/treatment.

B. DR. ELINE

While treating Mr. Bolden through the use of conservative medical modalities, Dr. Eline noted: (a) complaints of low back and radiating right leg pain "with some numbness and tingling"; (b) the presence of "fairly significant lumbar paraspinal muscle tenderness and spasming"; (c) an inability to engage in repetitive bending, squatting, twisting or lifting activities; and (d) an antalgic gait.

In view of these symptoms, as well as the recommendations of an independent evaluator, Dr. Eline recommended the performance of an epidural injection, which was administered on April 11,

2001. However, when this procedure failed to provide any appreciable relief and Mr. Bolden manifested clinical evidence of discogenic pain (positive right straight leg raise response; "give way weakness of his right EHL and gastrosoleous as well as his tibialis anterior"), Dr. Eline obtained an updated MRI scan, which revealed "annular bulging [at L5-S1, which was]. . . abutting the S1 nerve root sleeves bilaterally."

Despite this finding, Dr. Eline did not believe Mr. Bolden was a surgical candidate and recommended continued use of medication (Vioxx, Soma and Ultram) for symptom control. Additionally, this physician: (a) determined he had sustained a 10% whole body/spinal impairment "due to his residual lower back and right leg symptoms"; (b) recommended continued medication and reevaluation every three months in order to maintain his condition; and (c) ultimately concluded Mr. Bolden was "only capable of sustaining sedentary work activities as a result of his compensable back injury and its consequences. . . ."

In this regard, Dr. Eline similarly confirmed: (a) "while Mr. Bolden's pain threshold may be lower than that of other individuals, his lumbar pathology is certainly producing some level of pain, which limits his functional capacity to sedentary work"; and (b) the medical modalities he had recommended were "reasonable, medically necessary and geared toward lessening. . . [his] period of disability/maintaining his current, albeit compromised, level of function. . . ."

C. VOCATIONAL EVIDENCE

On June 1, 2001 and August 30, 2001, he was evaluated by Dr. William W. Stewart of the University of South Carolina School of Medicine's Department of Neuropsychiatry and Behavioral Science. On these dates, Dr. Stewart administered both I.Q. and educational testing, which established he: (a) had a full scale I.Q. of 73, which "place[d]. . . him slightly above the mentally deficit (retarded)

range"; and (b) possessed educational skills (reading and arithmetic) which were reflective of functional illiteracy.

In this regard, Dr. Stewart explained:

> Clearly, from an intelligence standpoint, Mr. Bolden would have to be considered an individual who, **because of his low borderline intelligence, would have problems coping and dealing with his injuries, his inability to return to the job he considered a career (not just a job), and what he might be capable of doing in the future.**
>
> . . .
>
> **It is important to remember that individuals who fall in this very limited range of intelligence have great difficulty both understanding and explaining their physical problems. This lack of sophistication is often misinterpreted, and, in fact, may be assumed to be evidence of symptom magnification/exaggeration. In view of this fact, it is not surprising that Dr. Eline originally suggested symptom magnification. However, he later verified Mr. Bolden's actual pathology was severe enough to limit him to no more than sedentary work, which represent severe work restriction.**

After considering his work history ("heavy to very heavy from a physical/exertional demand standpoint; and. . . unskilled to low-semi skilled from a skill level standpoint"), in light of the restrictions identified by Dr. Eline, Dr. Stewart determined his "prognosis for successful vocational rehabilitation to some kind of lighter, alternative work or job is quite poor. . . ." Dr. Stewart likewise confirmed:

> . . . When Mr. Bolden's physical limitations are considered in light of his illiteracy and borderline (retardation) intelligence level, it is highly unlikely he will be able to find and sustain employment. And, based on his age, work history and total illiteracy/low level of education, it is also concluded that he is not a realistic vocational rehabilitation candidate. Consequently, I do not believe a reasonably stable market exists for the types of services Mr. Bolden is physically, educationally and vocationally capable of performing.

D. CURRENT FUNCTIONAL ABILITIES

1. EDUCATIONAL/ INTELLECTUAL

The evidence of record unequivocally indicates Mr. Bolden: (a) has always required assistance in managing his money and paying bills (Hearing Transcript, p. 18); (b) has difficulty reading, to the extent he took an oral test to obtain his driver's license and requires help from family members to understand correspondence and complete job applications (See, Hearing Transcript, pp. 8 and 10; August 24, 2001 Deposition, pp. 13 and 23); (c) took primarily vocational/trade courses in school (Hearing Transcript, pp. 5 and 49); and (d) received assistance from tutors while training to become an automobile/diesel mechanic's helper (Hearing Transcript, p. 48).

2. PHYSICAL SYMPTOMS/LIMITATIONS

The uncontradicted evidence likewise establishes Mr. Bolden remains moderately symptomatic, to the extent he: (a) has difficulty sleeping (2 - 2.5 hours at a time); (b) takes between six and eight extra strength Tylenol on a daily basis; (c) does not engage in lifting weights exceeding twenty pounds; (d) encounters problems tying shoes and putting on socks; (e) notes increased low back and right leg symptoms with activity; (f) has substantially limited his maintenance of his own vehicle (now only checking belts/oil before trips, as opposed to changing oil, repairing vehicle, etc. (activities which are now performed by friends and relatives).

E. VIDEO SURVEILLANCE

During his period of temporary disability, he was placed under video surveillance on various occasions. However, despite their repeated attempts, Respondents obtained no footage which was materially inconsistent with Dr. Eline's opinions relative to his work capacity.

F. NEXT COURSE OF LITIGATION

By Order dated February 27, 2003, the hearing commissioner found: (a) the evidence did "not support a finding that. . . [Mr. Bolden] is permanently and totally disabled"; (b) he was "capable of performing gainful employment"; and (c) his residual permanent disability amounted to 17% of his back. **Significantly, while Respondents sought to include an adverse finding relative to his credibility, the hearing commissioner declined to do so.**

Pursuant to a Form 30 dated March 12, 2003, he appealed the hearing commissioner's determination to an Appellate Panel of the Full Commission, citing various grounds of error. Subsequently, by Order dated November 19, 2003, the Panel: (a) affirmed the hearing commissioner's determination in all respects; (b) added a single finding/conclusion to the effect that "[t]he videotape supports the decision of the hearing commissioner"; and (c) essentially declined to address his exceptions, including those which challenge the adequacy of the hearing commissioner's factual findings.

By Petition filed December 17, 2003, Mr. Bolden sought judicial review of the Commission's ruling. Among other things, he challenged: (a) the adequacy of the Commission's factual findings, maintaining the Order failed to provide any explanation of the basis/rationale for its disability assessment; (b) the absence of any analysis relative to the significance/impact of material evidence contained in the hearing record (medical limitations, educational/vocational deficits and credibility); and (c) its failure to address various issues raised by his Form 30.

Subsequently, by Order dated March 27, 2005 (filed April 7, 2005), the Honorable Perry M. Buckner, III vacated the November 19, 2003 Order and remanded Mr. Bolden's claim to the Commission for further action. In this regard, he: (a) specifically identified several evidentiary

components which were particularly relevant to the assessment of Mr. Bolden's residual disability; (b) concluded "meaningful consideration of this evidence – including an appraisal of Mr. Bolden's credibility, i.e., the weight afforded to his testimony – is essential to the resolution of the disputed issues"; (c) instructed the Commission to take "additional action consistent with this Order, as well as applicable Commission Regulations"; and (d) held that "all further rulings in this matter shall contain not only detailed factual findings, but also thorough explanation of the rationale underlying. . . [the Commission's] ultimate determination."

Pending reassignment of this claim to a newly constituted Appellate Panel (due to the fact two of the three original members were no longer serving as Commissioners), Mr. Bolden, by Motion dated September 13, 2006, sought to submit revised legal memoranda, as well as additional oral argument to the Panel. In support of this Motion, he: (a) argued Commission Regulations 67-701, 67-704, 67-706 and 67-708 verified a right to oral argument before the Appellate Panel; (b) maintained the plain language of Regulation 67-706 ("Each party is permitted ten minutes for oral argument. The appellant is permitted three minutes for reply.") entitled him to reargue his prior appeal (as enhanced by Judge Buckner's Order); and (c) further submitted "the need for oral argument is clearly heightened by the absence of two of the three previous Panel members."

By Orders dated January 3, 2007, the Commission: (a) designated an Appellate Panel, which included two new members; (b) dismissed his Motion; and (c) ruled the Motion, which was wholly consistent with Judge Buckner's directive, addressed "the merits of. . . [the] case." Additionally, despite the perfection of this appeal, one of the Panel members forwarded defense counsel an e-mail which: (a) instructed him to prepare a proposed Order affirming the initial ruling; and (b) provided absolutely no

indication of the rationale for this purported ruling, instead leaving it to counsel to address the issues identified by Judge Buckner.

LEGAL ANALYSIS

A. STANDARD OF REVIEW/NECESSITY OF SPECIFIC FACTUAL FINDING

S.C. Code Ann. Section 1-23-350 (1976, as amended) provides that the final decision of an administrative agency "shall include findings of fact. . . accompanied by a concise and explicit statement of the underlying facts supporting the finding." Section 42-17-40 similarly prescribes that the Commission's award include "findings of fact, rulings of law and other matters pertinent to the questions at issue. . . ."

S.C. Code Ann. Section 1-23-380 (A)(5) (1976, as amended), which governs judicial review in this context, states in pertinent part:

> The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions or decision are:
>
> (a) in violation of constitutional or statutory provisions;
>
> . . .
>
> (c) made upon unlawful procedure;
> (d) affected by other error of law;
> (e) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
> (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

Additionally, it is axiomatic that where, as here, "a case that has been appealed and remanded by the [C]ourt to the [W]orkers' [C]ompensation [C]omission with specific directions, the [C]omission must proceed in accordance with those directions." Bobo v. Marshane Corporation, 302 S.C. 86, 394 S.E. 2d 2,

4 (Ct. App. 1990). As further confirmed by the Court of Appeals, the Circuit Court: (a) "limits the authority of the [C]ommission when it imposes/outlines remand directives; and (b) technically maintains jurisdiction of the matter "while it awaits the [C]ommission's compliance with the Order of remand." (Id.).

As previously noted, Judge Buckner's remand instructions specified: (a) "a meaningful consideration of [various portions of the evidence] – including an appraisal of Mr. Bolden's credibility, i.e. the weight afforded to his testimony – is essential to the resolution of the disputed issues"; (b) all further rulings in this matter shall contain not only detailed factual findings, but also thorough explanations of the rationale underlying . . . [the Commission's] ultimate determination"; and (c) the Commission was obliged to take "additional action consistent with this Order, **as well as applicable Commission Regulations. . . .**"

Significantly, a review of the pertinent Commission regulations reveals: (a) Regulation 67-701 (A)(4) indicates oral argument will be conducted upon the request of either party; (b) Regulation 67-706 establishes the amount of time afforded to each party for oral argument; (c) Regulations 67-701 (A)(4)(a) and 67-708 (C) identify the circumstances which give rise to waiver of the right to oral argument; and (d) Regulation 67-709 (E)(3) similarly addresses one of the limited exceptions (certification of issue to remaining Commissioners where "the Panel cannot agree on modifying the Hearing Commissioner's decision") to the general right of oral argument (explicitly stating "[o]ral argument is not permitted" in this context).

"The words of a regulation must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the regulation's operation." Byerly v. Conner, 307 S.C. 441, 415 S.E. 2d 796, 799 (1992). Additionally, where any question exists as to the intended effect of a regulation,

our Appellate Courts have not hesitated to apply traditional rules of construction. See, Dorman v. Department of Health and Environmental Control, 350 S.C. 159, 565 S.E. 2d 119, 124-5 (Ct. App. 2002) (Applying rule that amendment is presumed to "make a change in the existing law").

In this regard, the plain and unambiguous language of the above-cited regulations clearly establishes: (a) a general right to oral argument in connection with the review hearings before the Full Commission/Appellate Panel; and (b) the Commission has delineated the particular exceptions to its standard procedure. However, assuming arguendo, a question existed as to the presence of this procedural requirement, application of the relevant rule of construction removes any doubt.

Specifically, "[a] well-established rule of statutory construction is 'expressio unius est esclusio alterius', which means that the enumeration of particular things excludes the idea of something else not mentioned." Pennsylvania National Mutual Casualty Insurance Company v. Parker, 282 S.C. 546, 320 S.E. 2d 458, 463 (Ct. App. 1984). Essentially, this canon of construction recognizes "[t]he enumeration of exclusions from the operation of a statute indicates that the statute should apply to all cases not specifically excluded." Hodges v. Rainey, 341 S.C. 79, 533 S.E. 2d 578, 582 (2000); Riverwoods, LLC v. County of Charleston, 349 S.C. 378, 563 S.E. 2d 651, 655 (2002).

As previously noted, the Commission unquestionably identified the circumstances where oral argument was either deemed to have been waived or "not permitted." Given this fact, in light of the language of Regulations 67-701 and 67-706, it must be presumed the Commission: (a) intended to establish a general right to oral argument; and (b) is required to receive this argument in conjunction with any review hearing unless prohibited by one of the specifically enumerated exceptions.

It is axiomatic that an administrative agency "must follow its own regulations." Triska v. Department of Health and Environmental Control, 292 S.C. 190, 355 S.E. 2d 531, 533 (1986). As the

Commission was required to afford Mr. Bolden oral argument per both Judge Buckner's Order and its own regulations, failure to do so constituted legal error.

ACCORDINGLY, Mr. Bolden respectfully requests this Court to reverse the January 3, 2007 denial of his request for oral argument; and (b) remand this matter for further action consistent with Judge Buckner's Order, including oral argument before a newly constituted Panel or a de novo hearing before the single commissioner.

Respectfully submitted,

Andrew N. Safran, Esquire
Post Office Box 12089
Columbia, South Carolina 29211

July 11, 2007

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM RICHLAND COUNTY

COURT OF COMMON PLEAS

L. CASEY MANNING, CIRCUIT COURT JUDGE

APPELLATE CASE NUMBER: 2017-000087

Leroy Bolden, ...Claimant/Respondent,

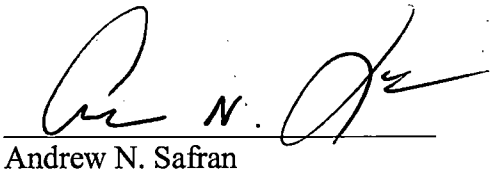
v.

Sun City Hilton Head Comm. Assoc., Employer, and Liberty Mutual Insurance Company, Carrier.....Appellants.

CERTIFICATE OF SERVICE

I, Andrew N. Safran, do hereby certify that on the 7th day of February, 2017, I caused to be filed, via hand delivery, the original and six (6) copies of Respondent's Memorandum Seeking Dismissal of Appeal, with the Clerk of the South Carolina Court of Appeals. One (1) copy of the Respondent's Memorandum Seeking Dismissal of Appeal was furnished to counsel for Appellants via first class mail at the following address:

Clarke W. McCants, III, Esquire
Nance, McCants & Massey
Post Office Box 2881
Aiken, South Carolina 29802-2881



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February 7, 2017

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February 7, 2017

HAND DELIVERED
The Honorable Jenny Abbott Kitchings
Clerk
South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

RE: Leroy Bolden v. Sun City Hilton Head Comm. Assoc. and Liberty Mutual Insurance Company
Appellate Case No.: 2017-000087

Dear Ms. Kitchings:

Enclosed please find an original and seven copies of Respondent's Memorandum Seeking Dismissal of Appeal, which I am filing on behalf of Mr. Leroy Bolden relative to the above-captioned matter. At this time, I would greatly appreciate your filing these documents and returning one clocked copy to my courier.

By copy of this letter, I am serving a copy of this Motion on Clarke McCants, attorney for Appellants. As always, in the event he has any questions or comments concerning this matter, I invite him to contact me.

Thank you for your cooperation.

With kindest regards, I am

Very truly yours,

Andrew N. Safran

ANS/as

cc: Clarke W. McCants, III, Esquire