



Reply To

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February 9, 2017

FEB 18 2017

SC Court of Appeals

Via U.S. Mail

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: Clarence B. Jenkins v. Amazon.com and Insurance Company of the State
of Pennsylvania c/o Sedgwick Claims Management Services, Inc.
Date of Accident: February 10, 2013
WCC File No.: 1303989
Our File No.: 20194.13164
Claim No.: 30130262998
Appeal No.: 2016-000598

Dear Ms. Kitchings:

We write to respond to Appellant Clarence B. Jenkins' February 6, 2017 letter addressed to this Court. Although not styled as such and not accompanied by the requisite \$25.00 filing fee, Appellant's February 6 letter is clearly a request for rehearing of that portion of this Court's February 2, 2017 Order that granted, in part, Respondents' Motion to Strike Portions of Appellant's Initial Reply Brief and for Clarification and/or to Strike Designation of Matter ("Motion to Strike"). However, pursuant to Rule 240(i), SCACR, this Court "will not entertain petitions for rehearing on a motion or petition unless the action of the court on the motion or petition has the effect of dismissing or finally deciding a party's appeal." This Court's February 2, 2017 Order does not have the effect of dismissing or finally deciding Appellant's appeal. Therefore, this Court should summarily dismiss Appellant's February 6, 2017 letter.

Out of an abundance of caution, however, Respondents address the substance of Appellant's February 6, 2017 letter. As argued in their Motion to Strike, appellate review of a Commission decision is confined to the record before the Commission. S.C. Code Ann. § 1-23-380(4) ("[t]he review must be conducted by the court and must be confined to the record"); *see also Terry v. South Carolina Dept. of Health & Env'l Control*, 377 S.C. 569, 574, 660 S.E.2d 291, 294 (Ct. App. 2008) (appellate review of agency decisions "is confined to the record ..."). "This Court's review is *restricted to the evidence considered by the appellate panel* in reaching its decision," and may not rely on evidence not considered by the Commission. *Martin v. Rapid Plumbing*, 369 S.C. 278, 288, 631 S.E.2d 547, 553 (Ct. App. 2006) (emphasis added). Evidence that Appellant either brought with him to the May 21, 2015 hearing or subsequently attempted to submit to the Commission but which was never accepted into the Commission record cannot be considered by this Court on appeal. The reasoning

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behind this is embedded in the standard of review set out in the Administrative Procedures Act, *i.e.*, a reviewing court may not substitute its own judgment for that of the Full Commission as to the weight of the evidence on a question of fact, but may reverse if the decision is affected by an error of law. S.C. Code Ann. § 1-23-380(5); see *also* Shealy v. Aiken County, 341 S.C. 448, 455, 535 S.E.2d 438, 442 (2000) (the commission is the ultimate fact finder in workers' compensation cases); Lark v. Bi-Lo, Inc., 276 S.C. 130, 136, 276 S.E.2d 304, 307 (1981) (under the substantial evidence standard of review, appellate review "need not and must not be either judicial fact-finding or a substitution of judicial judgment for agency judgment"). If this Court admitted into the appellate Record and considered or relied on evidence that had not been admitted by the Commission, it necessarily would usurp the fact finding role reserved to the Commission.

Furthermore, looking at the entire transcript of the September 23, 2016 hearing in Appellant's civil case against the South Carolina Workers' Compensation Commission, which has been assigned Appeal No. 2016-001382, it is somewhat unclear whether The Honorable Judge Manning admitted and substantively relied on the materials attached to Mr. Jenkins' motion to include supporting documents in that case. (See Exh. A, p. 3, lines 6-8; p. 14, lines 4-11). In contrast, in the present appeal, the Commission clearly did not accept into the record or rely on the evidence that Respondents have moved to exclude.

As a result, regardless of the wording or the result reached in Appellant's other appeal, the Court reached the correct result in its February 2, 2017 Order, and Appellant's February 6 letter should be rejected.

Very truly yours,


Helen F. Hiser

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SC Court of Appeals

cc: Clarence B. Jenkins, *pro se*

1 STATE OF SOUTH CAROLINA) IN COMMON
 2 COUNTY OF RICHLAND) COURT
 3)
 4 CLARENCE B. JENKINS,)
 5) TRANSCRIPT
 6 -V-) OF
 7) RECORD--
 8 SC WORKERS COMPENSATION,) 2015-CP-40-07178
 9 COMMISSION)
 10 DEFENDANT.)

11
12 SEPTEMBER 23, 2016

13 RICHLAND, SOUTH CAROLINA

14
15 B-E-F-O-R-E:

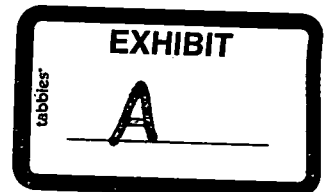
16 HONORABLE CASEY L. MANNING, JUDGE;

17
18 A-P-P-E-A-R-A-N-C-E-S:

19 FOR THE PLAINTIFF:

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21 FOR THE DEFENDANT:

22 JAMES KEITH ROBERTS, JR., ESQ.
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I-N-D-E-X

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MOTION:

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1. Motion and order information.

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1 (The following proceedings were held on
2 March 22, 2016.)

3 THE COURT: Next on the docket is Jenkins versus
4 South Carolina's Workers Comp Commission; is that the case?

5 MR. ROBERTS: Yes, sir.

6 THE COURT: All right. Motion to include
7 plaintiff's supporting document to dispute. What is that
8 all about?

9 THE PLAINTIFF: Thank you.

10 THE COURT: You Mr. Jenkins?

11 THE PLAINTIFF: Yes, sir.

12 THE COURT: Yes, sir. This is your motion?

13 THE PLAINTIFF: Yes, sir. Yes, Your Honor.

14 THE COURT: Okay.

15 THE PLAINTIFF: The motion includes where the
16 commissioner signed off on --

17 THE COURT: Wait. Slow down a little bit.

18 THE PLAINTIFF: Okay. I'm sorry.

19 THE COURT: All right.

20 THE PLAINTIFF: I'm getting a head of myself.

21 THE COURT: Don't worry. I get the same way.

22 THE PLAINTIFF: Yes, sir. What has happened with
23 the -- the single commission on March 21, 2015 he had the
24 attorney for the defendant to do an order saying --
25 basically certain facts of the case, right. So it went

1 before the full commission, and the full commission decided
2 to affirm what the single commission had agreed upon. So
3 the motion to file for -- document will dispute what's in
4 the official order, and stated as fact -- let me see, when
5 they -- in the official order they said I drew unemployment
6 up until 2012. If you look at my unemployment record it
7 showed that my last check was in March of 2010.

8 THE COURT: Uh-huh.

9 THE PLAINTIFF: So that was incorrect. When they
10 said that I missed my December the 23 I think -- no,
11 December 24th, 2014 doctor's appointment with Dr. Mahmoud
12 Abu-Atta that is incorrect because Dr. Abu-Atta's office
13 sent me a reassignment -- a new appointment because they had
14 training on the 24th.

15 THE COURT: All right. Hold on, Mr. Jenkins.

16 THE PLAINTIFF: Yes, sir.

17 THE COURT: There's some additional information
18 you want me to consider --

19 THE PLAINTIFF: Yes, sir --

20 THE COURT: Regarding your case?

21 THE PLAINTIFF: Right.

22 THE COURT: What is that additional information
23 you want me to consider?

24 THE PLAINTIFF: Well, I want you to consider all
25 of the supported documents that the dispute --

1 THE COURT: Okay. This is what I'm asking you,
2 what are those documents? You need to tell me what they
3 are. Do you have a list of them?

4 THE PLAINTIFF: Yes, sir.

5 THE COURT: All right.

6 THE PLAINTIFF: And I have a copy --

7 THE COURT: Have you seen a copy of it?

8 MR. ROBERTS: I believe so.

9 THE COURT: Okay. Well, let me -- hand me a copy.
10 Let me take a look at it, if that's okay.

11 THE PLAINTIFF: Okay.

12 THE COURT: Now, Mr. Jenkins, these documents that
13 are attached to your motion, these are the materials that
14 you want included for me to consider?

15 THE PLAINTIFF: Yes, sir.

16 THE COURT: All right.

17 THE PLAINTIFF: Yes, Your Honor.

18 THE COURT: And your position is that they were
19 left out and should be included, and I should consider them?

20 THE PLAINTIFF: Correct, Your Honor.

21 THE COURT: Okay. And that's your position?

22 THE PLAINTIFF: Correct, yes, sir.

23 THE COURT: And this includes all of the
24 information that you want me to consider?

25 THE PLAINTIFF: Well, at the moment. At the

1 moment. I have a list of documents.

2 THE COURT: Okay. So these document attached to
3 your motion you want me to consider that have not been
4 included in the record; is that correct?

5 THE PLAINTIFF: That's correct.

6 THE COURT: All right. And counsel for the
7 Workers Comp Commission indicates to me that he has copies
8 of these documents. I will be happy to hear your response.

9 MR. ROBERTS: Thank you, Your Honor. May it
10 please the court. My name is Keith Roberts, and I am --
11 counsel for the South Carolina Workers Compensation
12 Commission.

13 THE COURT: Who's with you?

14 MR. ROBERTS: And this is my law clerk and
15 candidate for admissions -- this is Ms. Marlin Johnson
16 Moore.

17 THE COURT: Where are you from, Mr. Moore?

18 SPEAKER2: I'm from Washington D.C. originally but
19 --

20 THE COURT: Well, welcome then.

21 SPEAKER2: Thank you.

22 THE COURT: Go ahead, sir.

23 MR. ROBERTS: Thank you, Your Honor. We're here
24 today as a result of a complaint that Mr. Jenkins has filed
25 with the court of common pleas alleges causes of action

1 against the Workers Compensation Commission, which is a
2 government entity. The commission heard and decided a
3 working compensation claim that Mr. Jenkins had brought
4 against his employer Amazon dot com.

5 THE COURT: Okay.

6 MR. ROBERTS: And after the hearing the single
7 commissioner issued a decision order on August of 2015.

8 THE COURT: Yes, sir.

9 MR. ROBERTS: Following the issuance of that order
10 Mr. Jenkins appealed that decision to the --

11 THE COURT: To the full commission?

12 MR. ROBERTS: Full commission. Yes, sir.

13 THE COURT: All right.

14 MR. ROBERTS: While that appeal was pending before
15 arguments had been heard he instituted this suit with the
16 court of common pleas naming the commission as, as, a
17 defendant, and so we responded with a motion to dismiss
18 pursuant to 12(b)(1) and to 12(b)(6) and while this case has
19 been pending in the court of common pleas. I have been
20 served with eight motions that I'm aware of that had been
21 filed by Mr. Jenkins. All of them essentially seek to
22 submit documents into evidence -- into evidence for you to
23 consider as part of his complaint against the commission.

24 THE COURT: All right.

25 MR. ROBERTS: It is the position of the commission

1 that any documentary evidence is premature at this time. I
2 don't want to take the position that he's not entitled to
3 let the court see anything that he feels is necessary for
4 you to make your decision --

5 THE COURT: Yes, sir.

6 MR. ROBERTS: But we did not -- formal discovery.
7 I believe that essentially at this time the issue to be
8 addressed is our motion to dismiss under 12(b)(1) and
9 12(b)(6) and pending your ruling on that motion further
10 discovery may be --

11 THE COURT: Thank you, sir.

12 Now, Mr. Jenkins, the position of the ~~commission~~
13 is that I can consider this.

14 THE PLAINTIFF: Yes, sir.

15 THE COURT: All right, relax. And they have a
16 motion to dismiss your claims --

17 THE PLAINTIFF: Yes, sir --

18 THE COURT: -- that I need to hear. So I will
19 hear from counsel for the Workers Compensation Commission to
20 why I should dismiss this, and then I will give you a chance
21 to respond.

22 THE PLAINTIFF: Okay.

23 THE COURT: Is that fair enough?

24 THE PLAINTIFF: Yes, sir.

25 THE COURT: You may proceed, sir.

1 MR. ROBERTS: Thank you, Your Honor. So
2 essentially the commission has two grounds as to why his
3 complaint should be dismissed. The first is under 12(b)(1)
4 that this court lacks subject matter jurisdiction. Mr.
5 Jenkins has alleged a complaint against the commission that
6 arises wholly out of the actions that the commission took
7 at the hearings that it held pursuant to 42-1720. To hear
8 and decide his contested case against his employer that he
9 brought to the commission, a typical workers compensation
10 claim. Before the commission Mr. Jenkins was the claimant,
11 and Amazon dot com, and their insurance carrier was the
12 defendants.

13 THE COURT: Okay.

14 MR. ROBERTS: My client issued first a decision
15 and order by the single commissioner on August of 2015 that
16 decided the merits of his claim pursuant to the workers
17 compensation act. Then the full commission conducted a
18 hearing in December of 2015, and their decision in February
19 of 2016 fully, and finally deciding his claim as far as the
20 workers compensation commission was concerned under the
21 workers compensation commission in there.

22 THE COURT: All right, sir. Thank you. Mr.
23 Jenkins, the rule used to be that the workers compensation
24 commission made a decision which was directly appealable to
25 the circuit court.

1 THE PLAINTIFF: Yes, sir.

2 THE COURT: That rule was changed I think about
3 five or six years ago, or something like that.

4 THE PLAINTIFF: Yes, sir.

5 THE COURT: And now all appeals from the Workers
6 Comp Commission goes straight to the court of appeals, and
7 not to the circuit court. His position is you're in the
8 wrong place. You need to appeal to the court -- I meant, to
9 the --

10 THE PLAINTIFF: Court of appeals.

11 THE COURT: Court of appeals, okay. And that's
12 plan and simple, and that's the law that operates now.
13 There's nothing I can do about that. That's his position.

14 THE PLAINTIFF: Yes, sir.

15 THE COURT: He cited the law. Now, I need to hear
16 a response from you as to why I should hear it rather than
17 it being appealed to the court of appeals.

18 THE PLAINTIFF: Yes, Your Honor.

19 THE COURT: Yes, sir.

20 THE PLAINTIFF: One, Statutory 12(b)(1) applies to
21 the residence of the South Carolina Workers Comp being in
22 Richland County that does give the court of common pleas
23 jurisdiction.

24 THE COURT: Okay.

25 THE PLAINTIFF: 12(b)(6) says that you must be

1 able to prove your case, and that's one way it should be
2 dismissed. I'm able to prove my case based on 12(b)(1)
3 which is sufficient evidence, and here's how we got here.
4 I'm not in the place of suing Amazon, and American -- I'm in
5 the place of filing civil lawsuit against South Carolina
6 Workers Comp Commission because they violated their own
7 laws. One, when we had the hearing on May 21, 2015 the law
8 says South Carolina Workers Comp Law Article 67-611 says, if
9 you self representing yourself you do not have to file
10 prelegal brief. On that day I brought my evidence to the
11 court on the hearing Commission Michael Campbell, II denied
12 me access to get my evidence into record. He left the bench
13 for about a half hour, went and researched the record, came
14 back and said I had need to file the prelegal brief. Which
15 is incorrect according to the law 67 -- R-67-611. So by
16 doing so I would like to present the court with a copy of
17 the defendant's brief, prelegal brief, where they destroyed
18 my medical records.

19 THE COURT: They're already considered a part of
20 the record.

21 THE PLAINTIFF: But I don't think you have this.

22 THE COURT: Let me tell you --

23 THE PLAINTIFF: Okay. Okay.

24 THE COURT: Listen to me carefully.

25 THE PLAINTIFF: Okay.

1 THE COURT: They're already considered a part of
2 this record.

3 THE PLAINTIFF: Okay. Yes, sir.

4 THE COURT: They are duplicitas to pile it on top
5 the same thing twice.

6 THE PLAINTIFF: Yes, sir.

7 THE COURT: If I looked at what you suggested -- I
8 take a look at..

9 THE PLAINTIFF: Okay. I appreciate it.

10 THE COURT: That's all right.

11 THE PLAINTIFF: And then also another one of the
12 laws that South Carolina Workers Comp filed is Form 14(b)
13 which states that anyone that is representing themself Form
14 14(b) must be completed by the assigned workers' compensation
15 doctor must also include a medical rating, and must also
16 include a releasement statement. That has not been done by
17 my assigned neurologist that the defendant authorized me to
18 see. And by South Carolina Workers Comp allowing the
19 defendant to distort medical and pertinent information
20 that's why we have the ruling that we have before the
21 Workers Comp Commission. They will -- you do not have a
22 copy of this. I have not submitted this yet.

23 THE COURT: I have a copy.

24 THE PLAINTIFF: Oh, you have a copy? Okay,
25 Brother, I just want to make sure you have it. That's all.

1 THE COURT: Thank you, sir.

2 THE PLAINTIFF: Yeah. And also during the May 21
3 hearing I also stated to Commissioner Campbell that the
4 court was being bias or prejudice toward me by not allowing
5 me to enter my information that the defendant had destroyed.
6 South Carolina Law 42-9-440 says, suspected false statement
7 and misrepresentation must be -- must be sent to the
8 Insurance Fraud Division to the Office of the Attorney
9 General. The commission shall report all cases of suspect
10 false statement of misrepresentation it's defined in Section
11 38-55-530. Back when a request was made to director to the
12 director of the commission Mr. Gary Cannon. I have yet to
13 get a response -- well, I got a denied response from him.
14 He refused to file a complaint with the United States
15 Attorney General's Office.

16 THE COURT: Mr. Jenkins, can I help you out a
17 little bit?

18 THE PLAINTIFF: Yes, sir.

19 THE COURT: I'm here today to decide whether or
20 not I have jurisdiction to entertain --

21 THE PLAINTIFF: -- yes, sir.

22 THE COURT: -- your motions.

23 THE PLAINTIFF: Okay.

24 THE COURT: I'm going to mark what you presented
25 to me.

1 THE PLAINTIFF: Yes, sir.

2 THE COURT: I'm obligated to do that.

3 THE PLAINTIFF: Yes, sir.

4 THE COURT: What I'm going to do is this. I'm
5 going to take into account everything you presented to me --

6 THE PLAINTIFF: -- yes, sir.

7 THE COURT: -- on your motion. I'm going to take
8 into account his arguments, and what you've told me.

9 THE PLAINTIFF: Yes, sir.

10 THE COURT: I will review the record, and I will
11 make a decision.

12 THE PLAINTIFF: Okay.

13 THE COURT: Now, at this point in time, I've heard
14 enough from both parties to make a fair and just decision
15 regarding you, and the commission, and I will do that. I
16 will take my time, consider it, and let you know my decision
17 in due course. Okay?

18 THE PLAINTIFF: Okay. Okay, thank you.

19 THE COURT: Thank you both so very much.

20 THE PLAINTIFF: Your Honor, if I could?

21 THE COURT: Let me help you out. I have
22 everything I need to make a fair and just decision regarding
23 both parties. I will do that, Mr. Jenkins. Thank you very
24 much for your presentation.

25 THE PLAINTIFF: Okay. Okay.

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THE COURT: This matter is concluded.

THE PLAINTIFF: Well, thank you.

THE COURT: You're welcome, sir.

END OF PROCEEDINGS

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