

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM S.C. WORKERS' COMPENSATION COMMISSION

Appellate Case No. 2016-000790

Ann Stevenson, Claimant,

Appellant,

v.

Wal-Mart Stores, Inc., Employer, and
New Hampshire Insurance Co., Carrier,

Respondents.

RECEIVED

APR 07 2017

SC Court of Appeals

RESPONDENTS' RETURN TO APPELLANT'S MOTION TO ALLOW EVIDENCE DATED
MARCH 30, 2017

In response to the Appellant's Motion to Allow Evidence, Respondents respectfully assert:

1. On March 2, 2017, the Court of Appeals issued an order granting Respondents' Motion to Strike several matters from Appellant's Designation of Matter. Specifically, the Court of Appeals indicated that all matters objected to in Respondents' Exhibit A shall be stricken and not included in the record on appeal. This order also indicated that the court declined to accept Appellant's Amended Designation of Matter.
2. On March 21, 2017, the Court of Appeals extended the time for Appellant to serve the Record on Appeal to May 3, 2017.
3. Appellant has now filed another motion to amend her Designation of Matter and to include in the Record on Appeal seven additional items. Each item is specifically discussed below.
4. The first document the Appellant seeks to include in the Record is the Full Commission Panel Hearing Transcript dated January 11, 2016. (Appellant's Motion page 2, #1). This document

can be properly included in a Record on Appeal. However, in this case, Appellant did not include this document in her Designation of Matter that was filed on November 28, 2016. Further, the Court of Appeals has already issued an order as to which documents shall be included in the Record on Appeal and the extension of time was granted for the Appellant to simply gather the materials and file the Record as opposed to seeking to add additional information. Respondents have no objection to this document on grounds that it is improper, but simply object based upon timeliness.

5. The second document the Appellant seeks to include in the Record is Commissioner Campbell's Order Instructions dated June 10, 2015. (Appellant's Motion page 2, #2). These materials were included in Appellant's original Designation of Matter dated November 28, 2016. These exact materials were specifically referenced as item #3. The Respondents raised an objection to these documents in their motion dated December 28, 2016, under #3 in Exhibit A. As indicated above, the Court of Appeals has already issued an order striking all materials objected to in Exhibit A. This exact issue and inclusion of this document has already been adjudicated by the Court of Appeals and Appellant's attempt to relitigate this matter is improper.
6. The third document the Appellant seeks to include in the Record is the Full Commissions Order Instructions dated January 29, 2016. (Appellant's Motion page 2, #3). As indicated above, this document is not an official document of the Commission nor is it under appeal. This document is simply a request for an order. There is no objection to the order of the Appellate Panel (in fact, that document is included in the Respondents' Designation as item #9), but the request for order is not an official document nor is it under appeal. Therefore, that document should not be included in the Record.
7. The fourth document the Appellant seeks to include in the Record is the Deposition of Claimant dated November 26, 2013, and Defendants Exhibit 1 presented at the hearing on January 8, 2015.

These materials were included in Appellant's original Designation of Matter dated November 28, 2016. These exact materials were specifically referenced as item #6. The Respondents raised an objection to these documents in their motion dated December 28, 2016 under #6 in Exhibit A. As indicated above, the Court of Appeals has already issued an order striking all materials objected to in Exhibit A. This exact issue and the inclusion of this document has already been adjudicated by the Court of Appeals and Appellant's attempt to relitigate this matter is improper.

8. The fifth document the Appellant seeks to include in the Record is a different version of the FCE. As properly noted by Appellant, the version of the FCE that was submitted to the lower court was a faxed copy and it appears as though a few lines are missing (signature on Defendants APA 4, page 42; one line on Defendants APA 4, page 44 – represented by large black line on faxed copy; all of Defendants APA 4, page 46 – represented by bar code type on faxed copy). Appellant seeks to introduce a “clean” version of the FCE. There are two problems with this request. First, only the version of the FCE that was submitted to the lower court is properly part of the Record. Therefore, the faxed copy that was submitted to the Commission is the version that should be included in the Record. Second, appellant made no objection either before the hearing or at the hearing to the submission of the faxed copy of the FCE. Any objections to the faxed copy or any attempt to submit the “clean” version should have been made before the Commission; there were no objections made. On Page 3 of the Hearing Transcript dated January 8, 2015, the Commissioner asked if there were objections to APA submissions and counsel for both parties indicated that there were no objections. Finally, as a practical matter, the missing data from the faxed copy is immaterial. The summary of the FCE is contained on Defendants APA page 41-42, and all of those pages are present and readable. The only evidence missing from the other faxed pages are the actual testing results which were not referenced or interpreted by the Commissioner; the Commissioner simply relied upon the summary as presented by the

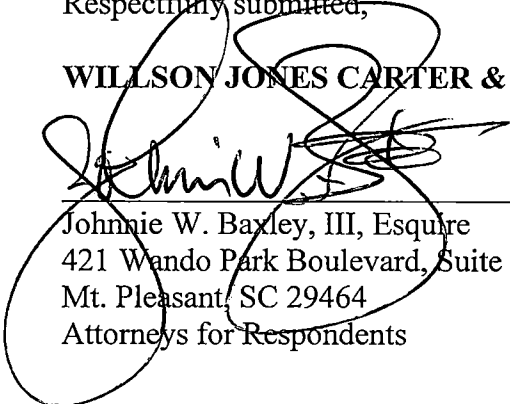
person who administered the test. (Order of Commissioner Campbell dated October 13, 2015, page 12). There is also an indication by the Appellant in her Motion that FCE report was tampered with; there is no basis and no merit in that accusation.

9. The sixth document the Appellant seeks to include in the Record are surveillance videos. These materials were included in Appellant's original Designation of Matter dated November 28, 2016. These exact materials were specifically referenced as item #33. The Respondents raised an objection to these documents in their motion dated December 28, 2016, under #33 in Exhibit A. As indicated above, the Court of Appeals has already issued an order striking all materials objected to in Exhibit A. This exact issue and the inclusion of this document has already been adjudicated by the Court of Appeals and Appellant's attempt to relitigate this matter is improper. Appellant mistakenly states that the surveillance videos were submitted at the lower court because they were listed as a possible exhibit on the Form 58 submitted December 29, 2014; however, the videos were not actually submitted as exhibits before the Commissioner at the hearing. (Hearing Transcript dated January 8, 2015).
10. The seventh document the Appellant seeks to include in the Record are pictures that were attached to Dr. Merritt's deposition. These materials were included in Appellant's Designation of Matter dated November 28, 2016, as item #7. The Respondents did not raise an objection to inclusion of the deposition of Dr. Merritt or the attached pictures in their motion to strike dated December 28, 2016. The Respondents have no objection to inclusion of clear color photos that were submitted to Dr. Merritt during his deposition. The confusion on this issue seems to center around the fact that the original transcript with the color photos cannot be located. At the original hearing before Commissioner Wilkerson dated December 19, 2013, the original transcript could not be submitted

because the deposition had just been conducted on December 18, 2013, and the original was not delivered in time to be submitted. Therefore, an electronic version was submitted at the hearing with copies of the photos which were not in color. On December 20, 2013, counsel for the Respondents received the original transcript and this was mailed to Commissioner Wilkerson with a carbon copy to counsel for Appellant. The Commission cannot locate a copy of the original deposition or the original color pictures. Counsel for the Respondents does not have a copy of the original or the original color pictures since those documents were not opened or unsealed before they were submitted to the Commission. However, since claimant has copies of the original color photos, Respondents have no objection to their inclusion in the Record on Appeal. Five color photos were introduced at the deposition of Dr. Merritt, but Appellant has included eight color photos with her Motion to Allow Evidence. Based upon a review of the black and white copies in the Commission's file and a comparison with the color photos presented by Appellant it appears as though the following attachments from Appellant's Motion to Allow Evidence are the proper color photos which should be submitted into the Record: Photo 3A, Photo 3B, Photo 1A, Photo 1B, and Photo 2B. The other photos should not be included as they were not submitted at the deposition of Dr. Merritt and would not have been submitted to the Commission.

Respectfully submitted,

WILLSON JONES CARTER & BAXLEY, P.A.



Johnnie W. Baxley, III, Esquire
421 Wando Park Boulevard, Suite 100
Mt. Pleasant, SC 29464
Attorneys for Respondents

Date: April 4, 2017

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM S.C. WORKERS' COMPENSATION COMMISSION

Appellate Case No. 2016-000790

Ann Stevenson, Claimant,

Appellant,

v.

Wal-Mart Stores, Inc., Employer, and
New Hampshire Insurance Co., Carrier,

Respondents.

RECEIVED

APR 07 2017

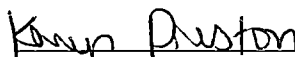
SC Court of Appeals

CERTIFICATE OF SERVICE

I, Karen C. Preston, do hereby certify that I am the Paralegal for Johnnie W. Baxley, III, Esquire, attorney for the defendants with **WILLSON JONES CARTER & BAXLEY, P.A.** in Mt. Pleasant, South Carolina, and that on the 4th day of April, 2017, I mailed the foregoing **RESPONDENTS' RETURN TO APPELLANT'S MOTION TO ALLOW EVIDENCE** to the following by placing a copy thereof in the United States mail, first class, proper postage affixed thereto:

Ann Stevenson
2261 Greenleaf Dr.
Conway, SC 29526

Jenny Abbott Kitchings, Clerk
South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211



Karen C. Preston

Paralegal to Johnnie W. Baxley, III, Esquire
WILLSON JONES CARTER & BAXLEY, P.A.
421 Wando Park Boulevard, Suite 100
Mount Pleasant, SC 29464

WILLSON JONES CARTER & BAXLEY, P.A.

ATTORNEYS AT LAW

GREENVILLE CHARLESTON COLUMBIA CHARLOTTE RALEIGH ATLANTA

Johnnie W. Baxley, III
Direct (843) 284-1082
Fax (843) 284-1081
jwbaxley@wjlaw.net

421 Wando Park Boulevard, Suite 100
Mt. Pleasant, SC 29464
www.wjclaw.net

April 4, 2017

The Honorable Jenny Abbott Kitchings
1015 Sumter Street
P.O. Box 11629
Columbia, SC 29211

RECEIVED

APR 07 2017

SC Court of Appeals

Re: Ann Stevenson vs. Wal-Mart Stores, Inc.
WCC File No.: 1303465 DOI: 2/16/2013
Carrier: New Hampshire Insurance, Co. - Claim No.: 6815476
WJC&B File No.: 0170.02572
Appellate Case No.: 2016-00790

Dear Ms. Kitchings:

Please find enclosed the following documents (an original and six copies) for filing in regards to the above-referenced case.

1. Respondents' Return to Appellant's Motion to Allow Evidence regarding Record on Appeal; and
2. Proof of service.

With kindest regards,

WILLSON JONES CARTER & BAXLEY, P.A.


Johnnie W. Baxley, III

JWB/hsh

Enclosures

cc: Ann Stevenson
Barbara Cowan (via e-mail)

neopost[®]
04/04/2017

US POSTAGE

FIRST-CLASS MAIL

\$02.45⁰



ZIP 29464
041L10235341

hsh

WILLSON JONES CARTER & BAXLEY, P.A.
ATTORNEYS AT LAW
421 WANDO PARK BOULEVARD, SUITE 100
MOUNT PLEASANT, SC 29464

RECEIVED

APR 07 2017

JENNY ABBOTT KITCHINGS,
SOUTH CAROLINA COURT OF APPEALS
P.O. Box 11629
COLUMBIA, SC 29211

