

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA WORKER'S COMPENSATION
COMMISSION

Appellate Panel

Appellate Case No. 2012-211870

RECEIVED

APR 24 2017

SC Court of Appeals

Richard A. Hartzell, Employee.....Respondent

v.

Palmetto Collision, LLC, Employer,.....Appellant

and

the S.C. Uninsured Employers Fund.....Respondent

***RESPONDENT RICHARD A. HARTZELL'S REPLY TO
APPELLANT'S MOTION FOR COSTS AND FEES***

Appellant's Motion for Costs and Fees should be denied pursuant to Rules 222(a) and 222(e) and Rule 242(j).

PROCEDURAL HISTORY

Appellant initially appealed the Worker's Compensation Commission Appellate Panel's award to Respondent Hartzell of a medical evaluation along with any benefits resulting therefrom, (R. p.7) on several grounds. On October 9, 2013, the Court of Appeals reversed the Worker's Compensation Commission on the ground that notice of injury to the employer was improper. Certiorari was subsequently granted and the Supreme Court reversed the Court of

Appeals on the issue of notice and remanded the case to the Court of Appeals to consider additional sustaining grounds which had not addressed in its initial opinion.

Or remand, the Court of Appeals, affirmed the Worker's Compensation Commission's finding that Hartzell suffered a compensable injury but reversed the award of a medical evaluation for lack of expert medical evidence as required by S.C. Code Section 42-15-60(A).

Thus, the status of the case is that Hartzell's compensable claim is pending before the Commission, however, he is not entitled to the employer paid medical evaluation.

APPELLANT PALMETTO COLLISION, LLC'S MOTION FOR COSTS AND FEES

Appellant now moves for costs and fees in three (3) categories:

1. Costs of the initial appeal to the Court of Appeals in the sum \$1,505.00 and a \$1,000.00 attorney fee; and
2. Costs of the appeal to the South Carolina Supreme Court upon its grant of certiorari of \$239.99 and another \$1,000.00 attorney fee; and
3. An additional \$1,000.00 attorney fee for the remand to the Court of Appeals.

The costs and fees claimed in the initial appeal and the appeal to the South Carolina Supreme Court upon its writ of certiorari, are foreclosed under Rule 222(e) which states in pertinent part:

“If a Petition for Writ of Certiorari is sought under Rule 222, the Court of Appeals shall tax costs only in those cases in which the Petition for a Writ of Certiorari is denied. In all cases in which a Writ of Certiorari is granted, costs shall be awarded in the manner provided by Rule 242(j).”

Respectfully, the Court of Appeals has no power to grant the motion for costs at least as to categories 1 & 2 above, as Rule 242(j)(1) and (5) make it clear that only the Supreme Court can grant costs under these circumstances. Rule 242(j)(1) provides in pertinent part:

“When the decision of the Supreme Court has the effect of affirming or reversing in part or vacating the judgment of the lower court or tribunal which was on appeal, costs shall be allowed only as ordered by the Supreme Court.”

This is precisely the case here where the lower tribunal (the Commission) was affirmed in part by the Supreme Court and other issues remanded to the Court of Appeals.

Additionally, Rule 242(j)(5) provides:

“Costs under this rule shall be taxed by the Supreme Court.”

A motion for costs to the Supreme Court would now be untimely as the motion must be filed within fifteen (15) days of its remittitur to the Court of Appeals.

As to the claimed fee on remand (Category 3), Hartzell respectfully submits that, even if the Court has jurisdiction to grant fees on remand after a successful petition for writ of certiorari, fees shall not be taxed against Hartzell because by affirming the Appellant Panel’s finding that Hartzell suffered a compensable injury, Hartzell has substantially prevailed. The net effect of the opinion on remand only denies the Commission’s award of a medical evaluation at employer expense. It does not foreclose Hartzell from benefits should he choose to seek an expert opinion at his own expense. Thus, costs and fees may not be taxed as a matter of course but only as allowed by the Court under Rule 222(a). Hartzell submits that it would be fundamentally unfair to tax any costs or fees against a party who has substantially prevailed on appeal.

CONCLUSION

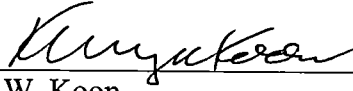
The motion for costs and fees should be denied.

REMINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.

SEE NEXT PAGE.

Respectfully submitted,

April 20, 2017



Kerry W. Koon
147 Wappoo Creek Drive, Ste. 203
Charleston, SC 29412
(843) 795-7000
ATTORNEY FOR RESPONDENT
RICHARD A. HARTZELL

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA WORKER'S COMPENSATION
COMMISSION

Appellate Panel

Appellate Case No. 2012-211870

RECEIVED

APR 24 2017

SC Court of Appeals

Richard A. Hartzell, Employee.....Respondent

v.

Palmetto Collision, LLC, Employer,.....Appellant

and

the S.C. Uninsured Employers Fund.....Respondent

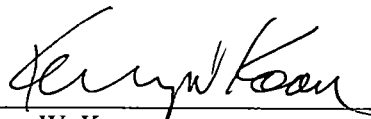
PROOF OF SERVICE

I certify that I have served Respondent Richard A. Hartzell's Reply to Appellant Palmetto Collision, LLC's Motion for Costs and Fees, by depositing a copy of same in the United States mail, postage prepaid, on April 20, 2017, addressed to their attorney of record, Kirsten L. Barr, Esq. and to the attorney for the S.C. Uninsured Employers Fund, Lisa C. Glover, Esq., as follows:

Kirsten L. Barr, Esq.
Trask & Howell, LLC
P.O. Box 2167
Mt. Pleasant, SC 29465

Lisa C. Glover, Esq.
State Accident Fund
P.O. Box 210039
Columbia, SC 29221-0039

April 20, 2017



Kerry W. Koon
147 Wappoo Creek Drive, Ste. 203
Charleston, SC 29412
(843) 795-7000
ATTORNEY FOR RESPONDENT

Telephone: Bus: (843) 795-7000
Fax: (843) 762-5276

KERRY W. KOON
Attorney at Law
147 Wappoo Creek Drive
Wappoo Centre, Suite 203
Charleston, South Carolina 29412

April 20, 2017

RECEIVED

APR 24 2017

SC Court of Appeals

Jenny Kitchings, Clerk of Court
Court of Appeals
1015 Sumter Street
Columbia, SC 29201

RE: Richard A. Hartzell v. Palmetto Collision, LLC
Appellate case number: 2012-211870

Dear Madam Clerk,

Please find herewith the original and six (6) copies of Respondent Richard A. Hartzell's Reply to Appellant's Motion for Costs and Fees together with a Proof of Service of the same.

With kindest regards, I am

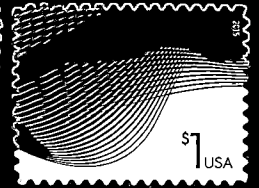
Very truly yours,



Kerry W. Koon

KWK:mm
Enclosures

cc: Kirsten L. Barr, Esq.
Lisa C. Glover, Esq.



KERRY W. KOON, ESQ.
147 WAPPOO CREEK DR., STE. 203
CHARLESTON, SC 29412



RECEIVED

APR 24 2017

Jenny Kitchings, Clerk of Court
Court of Appeals
1015 Sumter Street
Columbia, SC 29201

SC Court of Appeals