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THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA  
WORKERS' COMPENSATION COMMISSION

**RECEIVED**

W.C.C. File No. 1116275

JUN 02 2017  
SC Court of Appeals

John McDaniel, Employee, Claimant .....Appellant,

v.

Career Employment Professional  
d/b/a Snelling Staffing, Employer, and  
United Wisconsin Insurance Co., Carrier, ..... Respondents.

**MOTION TO STRIKE OR CORRECT  
APPELLANT'S NOTICE OF APPEAL**

Pursuant to Rules 203 and 240, SCACR, Respondents Career Employment Professional d/b/a Snelling Staffing and United Wisconsin Insurance Co. move this Court to strike and/or correct the Notice of Appeal filed by Appellant John C. McDaniel. Appellant's Notice of Appeal indicates that the order on appeal, "the order of the South Carolina Workers Compensation Commission, dated April 28, 2017 and filed on April 28, 2017" affirmed Commissioner James' orders "dated January 04, 2013 And September 30, 2013." Respondents note that the Commission Decision affirmed only Commissioner James' January 4, 2013 Order, as the September 30, 2013 Order was never timely and effectively appealed to the Full Commission.

As is set forth in the Commission Decision under appeal, (Commission Decision, Exh. A, pp. 2-5), Appellant's prior counsel timely filed a Form 30 Request for Commission Review of

the January 4, 2013 Order, (Exh. B), along with the appropriate filing fee. (Exh. C). After additional materials were received into evidence, the matter was remanded to Commissioner James to consider the newly admitted evidence. She issued her decision concerning her review of the newly admitted evidence on September 30, 2013. (Exh. D).

By Notice of Appellate Hearing, dated October 1, 2013, this matter was set for hearing by an Appellate Panel of the Full Commission on October 14, 2013. (Exh. E). Upon inquiry by Appellant, he was advised multiple times that the October 14, 2013 Appellate Panel hearing was to consider the January 4, 2103 Order only although, at that time, the period to appeal the September 30, 2013 Order had not yet run. (*See, e.g.*, Exh. F).<sup>1</sup> Rather than file an effective Form 30 Request for Commission Review that complied with the requirements of S.C. Code Ann. § 42-15-50, Appellant emailed a purported “Amended Form 30” without the statutorily required filing fee. (Exh. H). This email and self-styled “Amended Form 30” did not meet the requirements of S.C. Code Ann. § 42-15-50 and, therefore, was ineffective to appeal Commissioner James’ September 30, 2013 Order.

As a result, there has been no effective appeal from the September 30, 2013 Order. On remand from this Court, the Commission correctly noted that Appellant’s “Amended Form 30 was not properly before this Panel.” (Commission Decision, Exh. A, p. 7). Therefore, Appellant’s Notice of Appeal either should be stricken or corrected so as to delete any reference or inference that this appeal involves a challenge to the September 30, 2013 Order.

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<sup>1</sup> Because the Commission’s October 1, 2013 Notice of Appellate Hearing did not provide the statutorily required 30-days’ notice, this Court reversed the prior Commission Decision, filed December 19, 2013, that resulted from the October 14, 2013 Appellate Panel Hearing, and remanded to the Commission to provide Appellant with proper notice. No substantive issues were decided. (Exh. G).

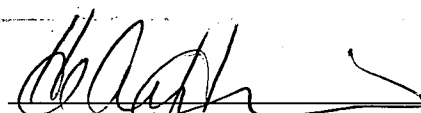
CONCLUSION

For the reasons stated herein, Respondents move this Court to strike or correct Appellant's Notice of Appeal to remove the reference to any appeal of Commissioner James' September 30, 2013 Order.

Respectfully submitted,

McANGUS GOUDELOCK & COURIE, LLC

May 30, 2017



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APPELLATE PANEL  
DECISION AND ORDER  
OF THE  
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION  
WCC FILE NO. 1116275

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JOHN McDANIEL, EMPLOYEE,

CLAIMANT/APPELLANT,

-v-

CAREER EMPLOYMENT PROFESSIONAL  
D/B/A SNELLING STAFFING, EMPLOYER

And

UNITED WISCONSIN INSURANCE CO., CARRIER

DEFENDANTS/RESPONDENT.

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**AFFIRM**

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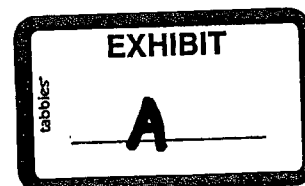
Appellate Panel Review held in Columbia, South Carolina  
on March 21, 2017, per notices timely and properly served  
on all parties of interest.

Appellate Panel Decision and Order  
Filed: April 25, 2017

APPEARANCES:

Claimant/Appellant:  
John McDaniel, appearing pro-se,  
of Wyoming, Michigan

Defendants/Respondent:  
Represented by Helen F. Hiser, Esquire  
and Allison C. Nussbaum, Esquire  
of McAngus, Goudelock, & Courie, LLC  
of Mt. Pleasant, South Carolina



## STATEMENT OF THE CASE

Initially, a hearing was held before the Honorable Melody L. James on November 28, 2012, in Summerville, South Carolina. On January 4, 2013, Commissioner James issued the following Findings of Fact and Conclusions of Law:

### FINDINGS OF FACT

1. The parties to the proceedings are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act. This finding is based upon the stipulations and admissions of the parties.
2. Claimant's applicable compensation rate is \$358.62 based upon an average weekly wage of \$537.91. The Claimant's twenty weeks of work is insufficient to base his average weekly wage, especially in light of his assignment and wages changing. However, there is no guarantee he would have continued with the assignment at Alside Revere (Testimony of Dan Cobb by way of Deposition). Employer provides temporary assignments with a goal of permanent placement. The third employee wages submitted do not provide for fifty-two weeks and they were all employed by Alside Revere. A fair and just method to calculate the wages of the Claimant is to take an average of the wages along with the three other employee wages provided. The Claimant--\$492.85; Atkins--\$506.88; Lampkin--\$618.50; and Clark--\$533.41.
3. On November 21, 2011 the Claimant suffered an injury by accident which arose out of and occurred during the course and scope of his employment to his left leg/foot and toes. The Claimant has received medical care and reached maximum medical improvement as of August 13, 2012.
4. The Claimant has a disability to the left leg of 34%.

5. The Defendants will receive a credit for all weekly benefits paid after the date of maximum medical improvement (August 13, 2012) pursuant to Curiel v. Environmental Management Services, 376 S.C. 23, 655 S.E.2d 482 (2007).
6. Claimant will be entitled to future medical care and treatment as indicated by Dr. Ohlson in his report of August 13, 2012, to include future surgery that will more likely than not be required on the maligned and anklyosis position of the fifth toe. Claimant will also require extra wide shoes. He will need Celebrex. He has been referred to Dr. Nancy Lembo for pain management and Defendants have authorized Dr. Tavel, whom the Claimant shall be allowed to continue to see.

#### CONCLUSIONS OF LAW

1. Pursuant to §42-1-130 and §42-1-140, at the time of the accident the Claimant and Defendant/Employer were covered parties under the provisions of the South Carolina Workers' Compensation Act.
2. Under §42-1-160, the Claimant suffered a compensable injury by accident arising out of and in the course and scope of his employment.
3. Pursuant to §42-1-40, the average weekly wage is defined. The Claimant is determined to have an average weekly wage of \$537.91 and a compensation rate of \$358.62.
4. Pursuant to §42-15-60 the Defendants are responsible for payment to medical providers of the medical expenses incurred by Claimant for treatment of his injury. The Claimant will be entitled to future medical care as directed and suggested by his authorized treating physician, Dr. Ohlson, to include pain management.

5. Pursuant to §42-9-10 the Claimant is entitled to compensation for a period of temporary total disability benefits.

6. Pursuant to §42-9-30, the Claimant is entitled to compensation for a specific permanent partial disability of 34% to the leg.

**ORDER**

Based upon the above Findings of Fact and Conclusions of Law, Commissioner James issued the following Order:

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that the Claimant has a compensable injury of November 21, 2011 to his left leg and reached maximum medical improvement on August 13, 2012; and

IT IS FURTHER ORDERED that the Claimant has an average weekly wage of \$537.91 and a compensation rate of \$358.62 and Defendants shall pay the Claimant for the underpayment of benefits and shall pay for a permanent loss of use and disability to the leg of 34% (66.3 weeks) in a lump sum after deducting a credit for the weekly benefits paid after August 13, 2012; and

IT IS FURTHER ORDERED the Defendants shall provide future medical care with Dr. Ohlson and Dr. Tavel as the authorized treating physicians with that medical care to include the medicals that have been set out by Dr. Ohlson in his medical records and his report of August 13, 2012; and

**IT IS SO ORDERED!**

Within the statutory period, prior Counsel for the Claimant, Thomas White, filed WCC Form No. 30, Request for Commission Review, setting forth six grounds for review as follows:

1. The Hearing Commissioner erred in Finding of Fact #2 and Conclusion of Law #3 in finding the Claimant had a compensation rate of \$358.62 based upon an average weekly wage of \$537.91; the error being the Single Commissioner should have found the Claimant was entitled to an average weekly wage and compensation rate in an amount not less than \$627.75 with a compensation rate of \$418.91.
2. The Hearing Commissioner erred in Finding as a Fact and Finding of Fact #2 that a fair and just method was to calculate the wages of the Claimant was to take an average of his wages along with the three other employee wages provided; the error being that it was not fair and just to the Claimant as it did not reflect the earnings of the injured employee and the error being that the amount that should have been used should be the actual earnings of the employee with the ultimate objective of reflecting fairly the Claimant's probable future earning loss.
3. The Hearing Commissioner erred in Finding as a Fact and Finding of Fact #2 that the wages of the Claimant, Atkins, Lampkin, and Clark were, respectively, \$492.85, \$506.88, \$618.50, and \$533.41; the error being the wages of the Claimant were based on an incorrectly calculated Form 20 that does not accurately reflect the wages of the Claimant and the wages of the other three individuals included partial weeks and were not correctly calculated under the Definition of Average Weekly Wage.
4. The Hearing Commissioner erred in Finding of Fact #4 and Ruling of Law #6 in finding the Claimant has a disability to the Left Leg of 34%; the error being that the Single Commissioner should have found that the Claimant's loss of use and disability greatly exceeded this amount based upon the residual vocational impact to the Claimant and how disabling the injury actually is.
5. The Hearing Commissioner erred in Finding as a Fact and a Ruling as a Matter of Law in Finding of Fact #5 that the Defendants should receive a credit for all weekly benefits paid after the date of maximum medical improvement and Ruling of Law #5; the error being the Single Commissioner should have found the Defendants were not entitled to a credit as the Claimant had not been able to return to work and no work had been offered although the Claimant was ready and available to attempt to try to come back to work with his employer if they offered work within his restrictions and Claimant had been actively seeking other employment.
6. The Hearing Commissioner erred in failing to find as a fact and ruling as a matter of law that the Defendants should be subject to fines and penalties for the late payments of temporary total disability benefits because those payments were made 14 days after they were due and Defendants failed to make timely payment on multiple occasions.

Additionally, on March 8, 2013, prior Counsel for the Claimant filed a Motion to Admit Additional and Newly Discovered Evidence to include pay records from Jerrod Lampkin, the Claimant's replacement at Alside Revere. By Judicial Conference Decision and Order dated April 15, 2013, the Claimant's Motion to Admit Additional Evidence, dated March 8, 2013 was granted.

This matter was first heard by an Appellate Panel of the Full Commission on October 14, 2013. On December 19, 2013, the Appellate Panel issued a Decision and Order affirming the Hearing Commissioner's January 4, 2013 Decision and Order. The Claimant timely appealed that Decision and Order to the South Carolina Court of Appeals which, based on insufficient notice of the October 14, 2013 Appellate Panel hearing, reversed and remanded to the Commission to provide the Claimant with the statutorily mandated 30-days' notice of the appeal hearing. All parties were provided the required 30-day notice of the Appellate Panel remand hearing, which was held on March 21, 2017.

The testimony in the record, together with documentary evidence (including the additional pay records of Jerrod Lampkin, admitted through Judicial Conference Order dated April 15, 2013), has been provided to the members of the Appellate Panel, and has been under careful study, review, and consideration. In addition, Briefs and oral arguments were received from both parties.

Upon Request for Review, the Appellate Panel shall review the Order and Award, weigh the evidence presented at the initial Hearing and, if good cause be shown, make its own Findings of Fact and reach its own Conclusions of Law pursuant to S.C. Code Ann. § 42-17-50. After careful review of the evidence presented and after considering the arguments presented by the parties, the Appellate Panel, by unanimous vote, affirmed the Hearing Commissioner's Order of

January 4, 2013. In reaching this Decision, the Appellate Panel did not consider any documents outside the record because the Claimant's Amended Form 30 was not properly before this Panel; therefore, any records submitted with the Amended Form 30 were not considered by the Panel.

#### EVIDENCE SUMMARY

At the original hearing on November 28, 2012, the Claimant sought benefits under the South Carolina Workers' Compensation Act based upon an accident at work on November 21, 2011. The Claimant alleged that he injured his left foot/left leg and left toes on that date and agreed he was at maximum medical improvement per the opinion of his treating physician, Dr. Ohlson on August 13, 2012. At the hearing, the Claimant argued his disability greatly exceeded the rating to his left lower extremity issued by Dr. Ohlson.

Further, the Claimant argued that the average weekly wage and compensation rate reflected on the Form 20 were incorrect. The Claimant alleged he worked for Snelling Staffing for less than one year; therefore, his average weekly wage does not reflect the earnings he was making at the time of his injury. In particular, the Claimant argued his average weekly wage and compensation rate should be based on Jerrod Lampkin's earnings, his replacement at Alside Revere. Claimant requested payment of the alleged underpayment for past due checks and his award in a lump sum based on the alleged compensation rate.

Also, at the hearing, Claimant requested future medical care as recommended by Dr. Ohlson, his authorized treating physician. The Claimant requested Defendants be denied any type of temporary total disability credit even though the Claimant agreed with maximum medical improvement being reached on August 13, 2012. Claimant argued the credit should be reduced or negated based on his continued attempts to find work.

At the hearing, Defendants agreed Claimant sustained an admitted injury to his left foot and he is at maximum medical improvement per Dr. Ohlson's August 13, 2012 opinion. Defendants argued Claimant's compensation rate on the Form 20 is correct with an average weekly wage of \$492.85, resulting in a compensation rate of \$328.58. Defendants requested the award be based on the average weekly wage and compensation rate reflected on the Form 20. Furthermore, Defendants alleged the loss of use and disability to the Claimant's left lower extremity should be consistent with the 17% rating assigned by Dr. Ohlson, the authorized treating physician.

Following the pre-hearing conference, the Claimant testified on his own behalf. He testified he is 30 years old with a birthdate of March 5, 1982. Claimant graduated from high school in 2000 and has no other degrees or diplomas. At the time of the hearing, Claimant testified he was enrolled at Trident Technical College in his third semester in civil engineering studies. Additionally, Claimant maintains a commercial driver's license that he received in 2006.

Prior to working for Snelling Staffing, Claimant worked in a sports store, performed construction work, worked as an auditor, served as a caddy on Kiawah Island, and sold cars.

When the Claimant was originally hired for Snelling Staffing, he was earning \$11.50 per hour. His first assignment was at Ben Arnold where he worked as a route delivery driver and routinely lifted 40-50 pounds. When his assignment at Ben Arnold ended as a result of his school schedule, he was placed at Alside Revere where he was moving 75-100 boxes in a warehouse.

Claimant testified he had a previous Workers' Compensation injury when he cut his finger at work but received no benefits other than medical care. Claimant denied any additional

Workers' Compensation claims. Claimant admitted to a motor vehicle accident in 2005 wherein he followed up with a chiropractor thereafter. Claimant settled his case for approximately \$5,000.00. Also, Claimant admitted to a motorcycle accident in 2001 but denied any broken bones. Claimant specifically denied any prior injuries to his left leg/left foot and any physical inhibitions in his ability to perform his work duties.

Before the Claimant received his second assignment at Alside Revere, he was out of work for approximately six weeks. His assignment at Ben Arnold ended as a result of conflicts with his school schedule. When he began working at Alside Revere, he received \$13.00 per hour and alleged he would receive nine hours per day and upwards of 45 hours or more per week. Claimant began his employment at Alside Revere on November 11, 2011 and worked nine hours that day. The following week, he worked 45.5 hours and earned a total of \$627.25.

Prior to the hearing, the deposition of the Claimant's supervisor, Dan Cobb was taken in lieu of live testimony. Mr. Cobb testified that the Claimant was brought on for full time work through Snelling Staffing, and he would be paid for at least 40 hours per week. Mr. Cobb testified there was a mandatory waiting period before Claimant would be hired as a permanent employee of Alside Revere. Following Claimant's accident, another employee was hired to replace him and receives overtime pay. Mr. Cobb testified he would not be able to hire the Claimant permanently until three months passed.

Claimant was involved in an admitted accident on November 21, 2011 wherein he injured his left foot when it was run over by a forklift. He was seen in the Emergency Room at Roper Hospital and diagnosed with multiple fractures. Thereafter, he was referred to Dr. Ohlson who provided treatment from November 28, 2011 through August 13, 2012. During his

treatment with Dr. Ohlson, the Claimant experienced multiple problems with wound healing and was ultimately referred to a wound facility.

In addition, Claimant received evaluations by Dr. Gudas and Dr. Brilliant for independent medical evaluations. Additionally, Claimant was referred for pain management and Defendants authorized treatment with Dr. Tavel. At the time of the hearing, the Claimant was under Dr. Tavel's care for pain management.

Claimant testified his foot was chronically swollen secondary to the injury and an alleged malunited fracture. Claimant explained he had orthotics and was in need of custom shoes. Claimant stated he is unable to fit his left foot into a normal shoe because his left foot is four sizes wider than the right and an oversized toe box is needed. Claimant described pain in his foot and leg which runs down his knee. Claimant stated his ability to be on his feet is very limited. Furthermore, Claimant said his pain level is constant and his base level is a 3 to 4 out of 10. He experiences symptoms including foot tingling, numbness and burning. If the Claimant is required to be on his feet for any period of time, his pain level elevates. After approximately 10 to 15 minutes, he experiences an elevation in his pain level. After about 45 minutes, his pain level spikes to a 6 or 7 out of 10. Claimant continues to use medication to include Celebrex, Gralise, Tylenol and a topical cream. Also, Claimant testified that he ices his foot regularly.

Claimant testified his standing limitation was 15 to 20 minutes, walking was 30 minutes and stated he walks with a noticeable limp. Out of an eight hour day, Claimant estimates he could probably stand or walk for up to two hours if he were able to intermittently change positions to standing and walking. Claimant cannot run, climb, squat, jump, and has a very difficult time with any sort of inclines. Also, Claimant has problems with balance and states he has fallen several times.

Claimant submitted earnings from several additional workers in his pre-hearing brief and asked the Hearing Commissioner to consider these wages.

### FINDINGS OF FACT

After careful review of the evidence presented in the instant case and after considering the arguments presented by the parties, the Appellate Panel of the South Carolina Workers' Compensation Commission, unanimously affirms the Hearing Commissioner's January 4, 2013 Decision and Order. We find substantial evidence in the record supports the Hearing Commissioner's Findings of Fact and adopt the following Findings of Fact as our own:

1. The parties to the proceedings are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act. This finding is based upon the stipulations and admissions of the parties.
2. Claimant's applicable compensation rate is \$358.62 based upon an average weekly wage of \$537.91. The Claimant's twenty weeks of work is insufficient to base his average weekly wage, especially in light of his assignment and wages changing. However, there is no guarantee he would have continued with the assignment at Alside Revere (Testimony of Dan Cobb by way of Deposition). Employer provides temporary assignments with a goal of permanent placement. The third employee wages submitted do not provide for fifty-two weeks and they were all employed by Alside Revere. A fair and just method to calculate the wages of the Claimant is to take an average of the wages along with the three other employee wages provided. The Claimant--\$492.85; Atkins--\$506.88; Lampkin--\$618.50; and Clark--\$533.41.
3. On November 21, 2011 the Claimant suffered an injury by accident which arose out of and occurred during the course and scope of his employment to his left leg/foot

and toes. The Claimant has received medical care and reached maximum medical improvement as of August 13, 2012.

4. The Claimant has a disability to the left leg of 34%.
5. The Defendants will receive a credit for all weekly benefits paid after the date of maximum medical improvement (August 13, 2012) pursuant to Curriel v. Environmental Management Services, 376 S.C. 23, 655 S.E.2d 482 (2007).
6. Claimant will be entitled to future medical care and treatment as indicated by Dr. Ohlson in his report of August 13, 2012, to include future surgery that will more likely than not be required on the maligned and ankylosis position of the fifth toe. Claimant will also require extra wide shoes. He will need Celebrex. He has been referred to Dr. Nancy Lembo for pain management and Defendants have authorized Dr. Tavel, whom the Claimant shall be allowed to continue to see.

#### CONCLUSIONS OF LAW

In view of these Findings of Fact, and as provided in the South Carolina Code of Laws,

**WE, THE APPELLATE PANEL, CONCLUDE THE FOLLOWING AS MATTERS OF LAW:**

1. Pursuant to §42-1-130 and §42-1-140, at the time of the accident the Claimant and Defendant/Employer were covered parties under the provisions of the South Carolina Workers' Compensation Act.
2. Under §42-1-160, the Claimant suffered a compensable injury by accident arising out of and in the course and scope of his employment.

3. Pursuant to §42-1-40, the average weekly wage is defined. The Claimant is determined to have an average weekly wage of \$537.91 and a compensation rate of \$358.62.
4. Pursuant to §42-15-60 the Defendants are responsible for payment to medical providers of the medical expenses incurred by Claimant for treatment of his injury. The Claimant will be entitled to future medical care as directed and suggested by his authorized treating physician, Dr. Ohlson, to include pain management.
5. Pursuant to §42-9-10 the Claimant is entitled to compensation for a period of temporary total disability benefits.
6. Pursuant to §42-9-30, the Claimant is entitled to compensation for a specific permanent partial disability of 34% to the leg.

**ORDER**

Based on the foregoing Findings of Fact and Conclusions of Law, we unanimously adopt the Hearing Commissioner's Order as follows,

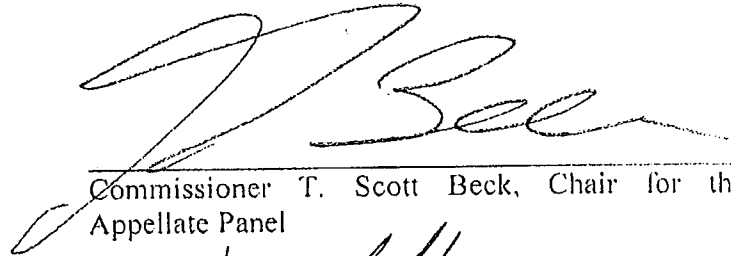
**IT IS THEREFORE, HEREBY ORDERED** that the Claimant had a compensable injury of November 21, 2011 to his left leg and reached maximum medical improvement on August 13, 2012; and

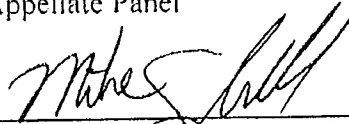
**IT IS FURTHER ORDERED** that the Claimant has an average weekly wage of \$537.91 and a compensation rate of \$358.62 and Defendants shall pay the Claimant for the underpayment of benefits and shall pay for a permanent loss of use and disability to the left leg of 34 percent (66.3 weeks) in a lump sum after deducting a credit for the weekly benefits paid after August 13, 2012; and

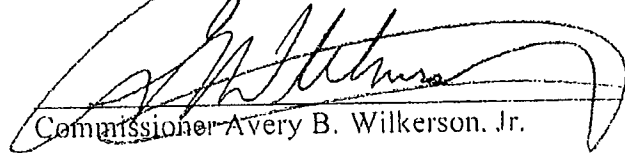
IT IS FURTHER ORDERED the Defendants shall provide future medical care with Dr. Ohlson and Dr. Tavel as the authorized treating physicians with that medical care to include the medicals that have been set out by Dr. Ohlson in his medical records and his report of August 13, 2012; and

IT IS SO ORDERED.

FULL AFFIRMATION

  
Commissioner T. Scott Beck, Chair for the Appellate Panel

  
Commissioner Michael Campbell

  
Commissioner Avery B. Wilkerson, Jr.

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 April 28, 2017**

DECISION AND ORDER  
OF  
THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION  
WCC FILE NO. 1116275

John McDaniel, EMPLOYEE/CLAIMANT,

vs

Career Employment Professional d/b/a Snelling Staffing, EMPLOYER, and  
United Wisconsin Insurance Company, CARRIER, DEFENDANTS.

Hearing: Held in Summerville, South Carolina,  
on November 28, 2012

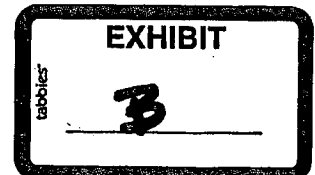
Appearances: Claimant represented by Thomas M. White, Esquire  
of The Steinberg Law Firm

Defendants represented by Allison Nussbaum,  
Esquire of McAngus Goudelock & Courie Law Firm

Purpose of Hearing: To determine the issues as set forth on Forms 50 and  
51, and Form 21 to determine if the Employer/Carrier  
may stop payment and, if so, to determine if Claimant  
is entitled to any further benefits.

Decision and Order: By Melody L. James, Commissioner

Filed: January 4, 2013



## STIPULATIONS

At the call of the case, the attorneys representing their respective parties, stipulated as follows:

1. That the Claimant and the Defendants were subject to and bound by the terms and conditions of the South Carolina Workers' Compensation Act.
2. Jurisdiction and sufficiency of the notice of the Hearing were admitted.
3. Venue for this hearing was properly had in Dorchester County, South Carolina pursuant to stipulations by the parties.

## MEDICAL EVIDENCE/RATINGS - APA SUBMISSIONS

Under the Administrative Procedures Act, the following records were submitted into evidence:

### CLAIMANT'S APA SUBMISSIONS

|                         |                                  |  |               |
|-------------------------|----------------------------------|--|---------------|
| 1.                      | Roper Hospital                   | Records,<br>11/21/11                         | Pages 1-15    |
| 2.                      | Rehab Centers of Charleston      | Records,<br>2/20/12-6/1/12                   | Pages 16-20   |
| 3. Blake Ohlson, MD     | Orthopaedic Specialists of Chas. | Records,<br>11/28/11-8/13/12                 | Pages 21-55   |
| 4. Charles Gudas, MD    | Associated Foot Specialists      | Records,<br>4/27/12                          | Pages 56-58   |
| 5. Howard Brilliant, MD | Parkwood Orthopaedics            | Records,<br>10/11/12                         | Pages 59-60   |
| 6. EXHIBIT              |                                  | Pay Stubs                                    | Pages 61-90   |
| 7. EXHIBIT              |                                  | TTD Pay Stubs                                | Pages 91-109  |
| 8. EXHIBIT              |                                  | Subpoenas/letters re:<br>like employee wages | Pages 110-119 |
| 9. EXHIBIT              |                                  | Wage Records of Like Employees               | Pages 120-122 |
| 10. Edward Tavel, MD    | Pain Specialists of Charleston   | Records,<br>10/30/12                         | Pages 123-125 |

**DEFENDANT'S APA SUBMISSIONS**

| EXHIBIT | DESCRIPTION                           | DATES    | PAGES    |
|---------|---------------------------------------|----------|----------|
| A.      | Claimant's Wage Records               |          | 13 pages |
| B.      | Correspondence to Claimant's Attorney | 10/19/12 | 1 page   |

**CLAIMANT'S BIOGRAPHICAL**

**NAME:** John McDaniel

**AGE:** 30 years old

**SEX:** Male

**MARITAL STATUS:** Single

**EDUCATION:** High school graduate, no other education except currently attending Trident Technical College.

**WORK HISTORY:** Sales, waiter, construction, bar auditor, caddy, and car salesman, temporary staffing.

**STATEMENT OF THE CASE**

The Claimant seeks benefits under the South Carolina Workers' Compensation Act based upon an accident at work on November 21, 2011. Claimant injured his left foot/leg and toes on that date and agrees that the treating physician says he is at maximum medical improvement. Claimant contends that his loss of use and disability greatly exceed the rating from the treating physician.

The Claimant further contends that the average weekly wage and compensation rate on the Form 20 are incorrect as it has not been properly calculated on its face. Further, since the Claimant had worked for Employer for less than one year, his average weekly wage should reflect the earnings he was making at the time of his injury. It was Claimant's position that his average

weekly wage and compensation rate should be based on Jerrod Lampkin's earnings, who was his replacement at Alside Revere. Claimant further contends he should receive underpayment for the past due checks and any award should be made in a lump sum based upon the above compensation rate.

The Claimant further contends he is entitled to future medical care as recommended by Dr. Ohlson with his authorized treating physician being Dr. Ohlson. The Claimant also contends that the Defendants are not entitled to any sort of credit for payment of benefits after the date of maximum medical improvement because Claimant has been actively seeking employment and the Employer has failed to provide him with any sort of work. Claimant has done everything he could do, including returning to school to try to find work.

The Defendants contend that the Claimant has an admitted injury to his foot and that he is at maximum medical improvement. They contend his compensation rate should be based upon an average weekly wage of \$492.85 resulting in a compensation rate of \$328.58. The Defendants contend that the Form 20 figures are correct and benefits should be based on the Form 20. The Defendants also argue that the loss of use and disability to the Claimant should be in line with the rating from the authorized treating physician.

#### **EVIDENCE OF THE CASE**

The Claimant testified in his own behalf. The Claimant is 30 years of age, having been born on March 5, 1982. He graduated from High School in the year 2000. He has no other degrees or diplomas. He has had one year of college at Trident Technical College and is in his third semester of Civil

Engineering studies. Claimant also had a commercial driver's license that he received in 2006.

Claimant worked initially in a sports store in sales where he was required to stand for his entire shift of 12 hours. He worked as a waiter for 5 years where he routinely lifted 60 to 70 pounds and had to stand for the entire shift. Claimant did construction work as a laborer and routinely lifted 60 to 70 pounds and spent all day on his feet. Claimant worked as an auditor auditing alcohol inventory for bars where he would have to lift kegs and cases and could lift up to 200 pounds. Claimant worked as a caddy on Kiawah Island where he had to lift 1 to 2 bags which could weigh up to 70 pounds each and had to walk the course. Claimant sold cars unsuccessfully for a couple of months where he had to stand all day. Finally, Claimant worked for Snelling Staffing and had been looking for work, earning \$11.50 per hour or more. His first job was with Ben Arnold where he worked as a route delivery driver and routinely lifted 40 to 50 pounds. He then went to work with Alside Revere where he was moving 75 to 100 pound boxes in a warehouse.

The above jobs are all the work the Claimant has done since High School and under his current restrictions, he cannot do any of the work he has ever done before.

The Claimant had a previous Workers' Compensation injury where he cut his finger at work but received no benefits other than medical care. He has had no Workers' Compensation claims. The Claimant was involved in an

auto wreck in 2005 and saw a chiropractor. That case settled for approximately \$5,000.00. He also had a motorcycle wreck in 2001 but had no broken bones.

The Claimant has had no previous injuries to his left leg or foot and was not physically limited in any way at work.

His first job through Snelling Staffing was at Ben Arnold. He worked there as a route delivery driver but could not continue that job because he had a scheduling conflict with school as he could not work after 3:00 pm on Wednesday.

His next job was with Alside Revere. He took this job after being out of work for approximately 6 weeks. The pay was \$13.00 per hour and he was told by Angela Baldwin of Snelling, who was an administrator, that he would work 9 hours per day and would be getting 45 hours or more per week. The Claimant started on November 11, 2011 and the first day he worked, he earned 9 hours. The next week he worked, he worked 45.5 hours and earned a total of \$627.25.

The deposition of the Claimant's supervisor, Dan Cobb, was taken in lieu of live testimony. Mr. Cobb testified on page 10 of his deposition that the Claimant was brought on for full time work. He was to get at least 40 hours per week. (Depo. Tr. P10). When the Claimant was injured, another worker from Snelling came to work at Alside Revere and, after the mandatory waiting period, became a permanent employee who now gets overtime every week from a couple of hours to 10 hours per week. (Depo. Tr. P13). He testified that there is consistent overtime. (Depo. Tr. P13). The Claimant was a very good employee

and had it worked out, he would have been permanent. (Depo. Tr. P14). Dan Cobb told Snelling that the Claimant was working out and it was a permanent position. (Depo. Tr. P15). Dan Cobb testified that the Claimant would transition from Snelling to Alside Revere after 3 months. The Claimant's plan was to make this a full time job and he planned to stay. Alside Revere called and wanted him to come drive for them after the injury until healed.

The Claimant was replaced after his injury by Jerrod Lampkin, who still works there and became a full time employee and took the permanent position with Alside Revere.

On November 21, 2011, the Claimant injured his left foot when it was run over by a forklift. He was transported by EMS to Roper Hospital where he was seen in the Emergency Room and was diagnosed with multiple fractures. He was referred to Dr. Ohlson, who treated him from November 28, 2011 through August 13, 2012.

The Claimant had multiple problems, to include an open wound on his foot. It was prescribed he go to a wound facility, which was never approved. He was referred by Dr. Ohlson to chronic pain management on May 14, 2012 and was not seen by anyone for chronic pain until October 30, 2012 and the Defendants refused to authorize the doctor that was being recommended by the Claimant's treating physician.

In addition to Dr. Ohlson, the Claimant also saw Dr. Gudas and Dr. Brilliant for Independent Medical Evaluations. The Claimant was eventually referred to Dr. Lembo for pain management. The carrier refused to authorize Dr.

Lembo but did authorize Dr. Tavel. The Claimant had last seen Dr. Ohlson on August 13, 2012 and is currently seeing Dr. Tavel for pain management.

The Claimant's foot is chronically swollen secondary to the crush injury. There is a malunited fracture. He has orthotics and is in need of custom shoes, which the carrier never authorized. The Claimant needs custom shoes because he cannot fit in normal shoes due to the fact that his left foot is 4 sizes wider than the right and an oversized toe box is needed.

The Claimant has pain in his foot and leg which runs down from his knee. His ability to be on his feet is very limited. His pain level is constant and is at a base level of about 3 to 4 out of 10. His foot tingles, stays numb, and burns. If he is on his foot or has to be up, his pain level elevates. His pain level will begin elevating after approximately 10 to 15 minutes of being up. After about 45 minutes, it will go to a 6 or 7 out of 10.

The Claimant continues to use medication, to include Celebrex, Gralise, Tylenol, and a topical cream. He also ices his foot regularly.

The Claimant stated that his standing was limited to about 15 to 20 minutes. Walking was about 30 minutes. Claimant walked with a noticeable limp. Out of an 8 hour day, he believes he could probably stand or walk for up to about 2 hours if he were to total his intermittent standing and walking throughout an 8 hour day.

The Claimant cannot run, climb, squat, jump and had a very difficult time with any sort of inclines. He also had problems with balance and has fallen several times.

Since his injury, the Claimant has done an internship for Snelling for a Law Firm. He has been available for work but they have provided no other work other than that at the Law Firm, which was working on a computer, and he completed that internship. The whole time, he has been in contact with Snelling for work but they have had none available. He routinely contacted Jim Pascuitti, but there was no work available. He looked for other work but could not find any. He estimated he applied for 35 to 40 jobs but there had been no response.

The Claimant had not been able to find a job and no one would hire him. His hope was to finish school in 3½ years and be able to find a job compatible with his limitations in Civil Engineering.

The Claimant wants to continue seeing his authorized physicians, Dr. Ohlson and Dr. Tavel. He uses orthotics and custom shoes and plans to have surgery if his condition worsens.

Also submitted in the Claimant's APA's were the earnings of workers who had worked before and after him at the same job at Alside Revere through Snelling. All earned overtime and Claimant argues that this should be evidence that his average weekly wage and compensation rate should be based upon his expected earnings at his new job where he was earning more money and getting more hours than he had been getting at his previous job at Ben Arnold. The Claimant would have continued working and the worker that replaced him had an average weekly wage over the earnings submitted by Snelling of \$656.50 per week. This was the exact same job the Claimant was working when he was injured and this was his replacement. This would support

an average weekly wage of \$656.50 and a compensation rate of \$437.69. The Claimant argues this is further grounds to support that his average weekly wage and compensation rate should be based upon the earnings he was told he would be making at Alside Revere. Claimant argues weekly wages of other employees is miscalculated because it does not take into account partial weeks and partial weeks were calculated as full weeks.

The medical records reflect the Claimant was injured when his foot was run over by a forklift with multiple fractures. The second through fifth metatarsals were fractured and he was immediately referred to Dr. Ohlson who treated him for his injuries. According to Dr. Ohlson's notes, there were delays in getting his wound treatment which delayed recovery. The Claimant was also referred on May 14, 2012 to a chronic pain doctor. Dr. Ohlson also noted that the Claimant would need surgery at some point for the removal of the malunited fragment. On July 2, 2012, he ordered orthotics and custom shoes. On August 13, 2012, he noted the Claimant was at maximum medical improvement and referred him to Dr. Lembo for chronic pain management. He noted the Claimant could walk for less than one hour. His lifting was no more than 10 pounds. He could not climb ladders. He could do no roof work. He could not do prolonged standing. He noted the fifth toe was malunited and surgery could be required and more than likely, he would need that surgery. He noted the Claimant would need extra wide shoes, should continue on Celebrex, and gave him a 17% impairment to the leg, for decrease in sensation and dysesthesias in the

distribution of the superficial peroneal nerve. He gives 15% to the leg and 2% added for ankylosis of the 5<sup>th</sup> toe.

Dr. Howard Brilliant saw the Claimant for an Independent Medical Evaluation and felt he had a 50% impairment to the foot.

### **FINDINGS OF FACT**

Based on the stipulations of the parties, testimony and evidence received and produced at the Hearing, the undersigned Commissioner finds the following facts based on a preponderance of the evidence

1. The parties to the proceedings are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act. This finding is based upon the stipulations and admissions of the parties.

2. The Claimant's applicable compensation rate is \$358.62 based upon an average weekly wage of \$537.91. The Claimant's twenty weeks of work is insufficient to base his average weekly wage, especially in light of his assignment and wages changing. However, there is no guarantee he would have continued with the assignment at Alside Revere. (Testimony of Dan Cobb by way of Deposition). Employer provides temporary assignments with the goal of permanent placement. The third employee wages submitted do not provide for fifty-two weeks and they were all employed by Alside Revere. A fair and just method to calculate the wages of the Claimant is to take an average of the wages along with the three other employee wages provided. The Claimant - \$492.85; Atkins - \$506.88; Lampkin - \$618.50; and Clark - \$533.41.

3. On November 21, 2011, the Claimant suffered an injury by accident which arose out of and occurred during the course and scope of his employment to his left leg/foot and toes. The Claimant has received medical care and reached maximum medical improvement as of August 13, 2012.

4. The Claimant has a disability to the left leg of 34%.

5. The Defendants will receive a credit for all weekly benefits paid after the date of maximum medical improvement (August 13, 2012) pursuant to Curie!

6. Claimant will be entitled to future medical care and treatment as indicated by Dr. Ohlson in his report of August 13, 2012, to include future surgery that will more likely than not be required on the maligned and ankylosis position of the fifth toe. Claimant will also require extra wide shoes. He will need Celebrex. He has been referred to Dr. Nancy Lembo for pain management and Defendants have authorized Dr. Tavel, whom the Claimant shall be allowed to continue to see.

#### RULINGS OF LAW

Accordingly, as provided by §42-17-40 S.C. Code Ann., it is the determination and finding of this Commissioner:

1. Pursuant to §42-1-130 and §42-1-140, at the time of the accident the Claimant and Defendant/Employer were covered parties under the provisions of the South Carolina Workers' Compensation Act.

2. Under §42-1-160, the Claimant suffered a compensable injury by accident arising out of and in the course and scope of his employment.

3. Pursuant to §42-1-40, average weekly wage is defined. The Claimant is determined to have an average weekly wage of \$537.91 and a compensation rate of \$358.62.

4. Pursuant to §42-15-60, the Defendants are responsible for payment to medical providers of the medical expenses incurred by the Claimant for treatment of his injury. The Claimant will be entitled to future medical care as directed and suggested by his authorized treating physician, Dr. Ohlson, to include pain management.

5. Pursuant to §42-9-10 the Claimant is entitled to compensation for a period of temporary total disability benefits.

6. Pursuant to §42-9-30, the Claimant is entitled to compensation for a specific permanent partial disability of 34% to the leg.

#### ORDER

Based upon the above Findings of Fact and Conclusions of Law, it is, therefore,

ORDERED, ADJUDGED AND DECREED that the Claimant has a compensable injury of November 21, 2011 to his left leg and reached maximum medical improvement on August 13, 2012; and

IT IS FURTHER ORDERED that the Claimant has an average weekly wage of \$537.91 and a compensation rate of \$358.62 and Defendants shall pay the Claimant for the underpayment of benefits and shall pay for a permanent loss of use and disability to the left leg of 34% (66.3 weeks) in a lump sum after deducting a credit for the weekly benefits paid after August 13, 2012; and

IT IS FURTHER ORDERED the Defendants shall provide future medical care with Dr. Ohlson and Dr. Tavel as the authorized treating physicians with that medical care to include the medicals that have been set out by Dr. Ohlson in his medical records and his report of August 13, 2012; and

AND IT IS SO ORDERED!



Commissioner Melody L. James

CERTIFICATE OF SERVICE

This is to certify the undersigned has this date served this order in the above entitled action upon all parties to this cause by sending an electronic copy hereof by electronic mail addressed to the attorney or attorneys for said parties or by depositing a copy hereof, postage paid, in the United States certified mail addressed to any unrepresented party.  
January 4, 2013

By: Tamara Morris, Administrative Assistant to Commissioner James

DAVID T. PEARLMAN  
J. KEVIN HOLMES  
THOMAS M. WHITE  
DALE E. VAN SLAMBROOK  
MALCOLM M. CROSLAND, JR.  
STEVEN E. GOLDBERG  
MICHAEL J. JORDAN  
BENJAMIN W. AKERY

CHARLES S. GOLDBERG, LLC, OF COUNSEL

HUGO M. SPITZ (RETIRED)  
IRVING STEINBERG (1902-1980)

Reply to: Thomas M. White  
white@steinberglawfirm.com

# THE STEINBERG

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FAX (843) 871-8585

January 14, 2013

The Honorable Virginia L. Crocker  
Judicial Director  
S.C. Workers' Compensation Commission  
P.O. Box 1715  
Columbia, SC 29202-1715



**COPY**

RE: **Claimant** : John McDaniel  
**EMPLOYER** : Career Employment Professional d/b/a Snelling Staffing  
**WCC No.** : 1116275  
**DOI** : November 21, 2011

Dear Ms. Crocker:

Enclosed please find the original and three (3) copies of a WCC Form No. 30 (Request for Commission Review) with three (3) copies of the Decision & Order attached, and our firm check for \$150.00 for your filing fee.

By copy of this letter to Allison Nussbaum, attorney for the Defendants, I am serving upon the Defendants a copy of this WCC Form No. 30 as shown on the enclosed Certificate of Mailing.

Yours very truly,

  
Thomas M. White

TMW /lib

Enclosures

cc: John McDaniel  
Allison Nussbaum, Esquire  
Roy Maybank, Esquire

EXHIBIT

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  c



Claimant's Name: John McDaniel SSN: 458-99-7462 Employer's Name: Career Employment Professional d/b/a Snelling Staffing  
Address: 1387 Camp Rd., Unit C Address: Ashley River Rd.  
City: Charleston State: SC Zip: 29412 City: Charleston State: SC Zip: \_\_\_\_\_  
Home Phone: \_\_\_\_\_ Work Phone: \_\_\_\_\_ Insurance Carrier: United Wisconsin Insurance Company  
Preparer's Name: Thomas M. White Law Firm: The Steinberg Law Firm Preparer's Phone #: (843) 572-0700

**REQUEST FOR COMMISSION REVIEW**

Request for Commission Review by  claimant  employer (check one) Date of injury: November 21, 2011

The undersigned makes application for review of the findings of the Commissioner in the above-captioned case. The request for review is based on the following grounds: (State the grounds of your appeal in the form of questions presented. Each question presented must contain a concise statement of one proposition of law or fact. Refer to evidence by title and exhibit number. Use additional pages if necessary).

**SEE ATTACHED ADDENDUM "GROUNDS FOR REVIEW"**

\_\_\_\_\_  
\_\_\_\_\_  
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(Check one) Oral argument  is  is not requested. Appellant's request for oral argument is waived if not indicated on this form.

I certify that I have served this document pursuant to R.67-211 by delivering a copy to Allison Nussbaum, Esquire,  
Name: \_\_\_\_\_

McAngus Goudelock & Courie LLC, Post Office 650007, Mt. Pleasant, 29465  
Address

on the 14 day of Jan 2013 by  first class mail  personal service  certified mail.

[Signature] Attorney for the Claimant January 14, 2013  
Preparer's Signature Title Date

Check this box if you are not represented by an attorney.

If the claimant appeals and is representing himself or herself, the Judicial Department will prepare the additional copies of this form and serve this form on the opposing party. R.67-701B. Otherwise, file the original and four copies of this form with the Judicial Department. The appeal must be postmarked no later than 14 days from the date of service of the Hearing Commissioner's decision. R.67-701 and R.67-205. Attach the filing fee to this form. Attach a Form 32 if you are unable to pay the filing fee. Refer to R.67-701 through R.67-711 for additional information.

## GROUNDS FOR REVIEW

Claimant: John McDaniel

Employer/Carrier: Career Employment Professional d/b/a Snelling Staffing/

WCC No.: 1116275

- FIRST: The Hearing Commissioner erred in Finding of Fact #2 and Conclusion of Law #3 in finding the Claimant had a compensation rate of \$358.62 based upon an average weekly wage of \$537.91; the error being the Single Commissioner should have found the Claimant was entitled to an average weekly wage and compensation rate in an amount not less than \$627.75 with a compensation rate of \$418.91.
- SECOND: The Hearing Commissioner erred in Finding as a Fact and Finding of Fact #2 that a fair and just method was to calculate the wages of the Claimant was to take an average of his wages along with the three other employee wages provided; the error being that it was not fair and just to the Claimant as it did not reflect the earnings of the injured employee and the error being that the amount that should have been used should be the actual earnings of the employee with the ultimate objective of reflecting fairly the Claimant's probable future earning loss.
- THIRD: The Hearing Commissioner erred in Finding as a Fact and Finding of Fact #2 that the wages of the Claimant, Atkins, Lampkin, and Clark were, respectively, \$492.85, \$506.88, \$618.50, and \$533.41; the error being the wages of the Claimant were based on an incorrectly calculated Form 20 that does not accurately reflect the wages of the Claimant and the wages of the other three individuals included partial weeks and were not correctly calculated under the Definition of Average Weekly Wage.
- FOURTH: The Hearing Commissioner erred in Finding of Fact #4 and Ruling of Law #6 in finding the Claimant has a disability to the Left Leg of 34%; the error being that the Single Commissioner should have found that the Claimant's loss of use and disability greatly exceeded this amount based upon the residual vocational impact to the Claimant and how disabling the injury actually is.
- FIFTH: The Hearing Commissioner erred in Finding as a Fact and a Ruling as a Matter of Law in Finding of Fact #5 that the Defendants should receive a credit for all weekly benefits paid after the date of

maximum medical improvement and Ruling of Law #5; the error being the Single Commissioner should have found the Defendants were not entitled to a credit as the Claimant had not been able to return to work and no work had been offered although the Claimant was ready and available to attempt to try to come back to work with his employer if they offered work within his restrictions and Claimant had been actively seeking other employment.

SIXTH:

The Hearing Commissioner erred in failing to find as a fact and ruling as a matter of law that the Defendants should be subject to fines and penalties for the late payments of temporary total disability benefits because those payments were made 14 days after they were due and Defendants failed to make timely payment on multiple occasions.

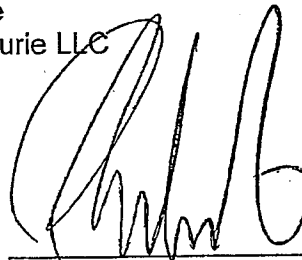
**CERTIFICATE OF SERVICE**

I hereby certify that on January 14, 2013, I served the Defendant in the foregoing matter with a copy of the attached WCC Form No. 30 (Request for Commission Review) by mailing a copy of same via first class mail, postage pre-paid and addressed as follows:

S.C. Workers' Compensation Commission  
P.O. Box 1715  
Columbia, SC 29202

Allison Nussbaum, Esquire  
McAngus Goudelock & Courie LLC  
Post Office 650007  
Mt. Pleasant, SC 29465

By:



Thomas M. White

DECISION AND ORDER  
OF  
COMMISSIONER MELODY L. JAMES  
OF THE  
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

SCWCC FILE NO.: 1116275

John McDaniel,

Claimant

v.

Career Employment Professional,

Employer, and

United Wisconsin Insurance Company,

Carrier, Defendants.

Hearing held in North Charleston, South Carolina on July 8<sup>th</sup>, 2013  
Per notice timely and properly served upon all Parties of Interest.

Appearances: Mr. John McDaniel, Claimant Pro Se

Allison Nussbaum, Attorney at Law, for Defendants

Filed: September 30, 2013

EXHIBIT

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## STIPULATIONS

Prior to the Hearing, the parties stipulated to the following:

1. The South Carolina Workers' Compensation Commission has jurisdiction of this claim; and
2. Venue, set in Charleston County, South Carolina, is proper.

## APA SUBMISSIONS

Pursuant to the South Carolina Administrative Procedures Act, the following exhibits were received into evidence:

Exhibit # 1: Payroll records of Jared Lampkin.

## STATEMENT OF THE CASE

This matter was remanded to the undersigned by Order of the Appellate Panel to consider the impact of the pay records of Jared Lampkin on the calculation of Claimant's average weekly wage.

## FINDINGS OF FACT

1. This matter was remanded by the Full Commission to consider the newly discovered evidence of the pay records of Jarod Lampkin at Alside Revere, along with the previously submitted evidence at the initial hearing. The parties participated in a hearing on July 8<sup>th</sup>, 2013 to argue the effect of the pay records of Jarod Lampkin from Alside Revere after his permanent placement. The new and previously submitted evidence, as well as the transcript of the previous hearing were reviewed.
2. The Claimant was 30 years old at the time of the initial hearing. He had approximately six (6) jobs after high school before seeking a position through this Employer, Career Employment Professionals, d/b/a Snelling Staffing Services. Snelling is a placement company that provides assignments for employees with other employers. Claimant had taken two different assignments with Snelling. The first was with Ben Arnold from May 2011 until September 30, 2011. He

made \$11.50 an hour in that position. That assignment ended; the testimony at the initial hearing was that the position ended as part of the problem was trying to work around Claimant's skill set and his school schedule. (Trial 46) On November 11, 2011 he was given an assignment with Alside Revere. He was making \$13.00 an hour. On November 21, 2011 he was injured at work.

3. As indicated in the previous order, the Claimant's wage history of 20 weeks with Snelling was insufficient to base his average wages. The parties provided the Employer's (Snelling) wages of three other employees who worked the same assignment at Alside Revere. (The wages are reflected in the initial order.) The newly submitted evidence is the new wage information for one of these employees, Jared Lampkin, with Alside Revere, after his subsequent, permanent hiring from the Snelling assignment. Mr. Lampkin was hired from Snelling to work with Alside at the rate of \$13.25 an hour.
4. As indicated in the previous order, whether the Claimant would have been permanently hired by Alside Revere, is unknown. The Claimant had only worked on the assignment for ten (10) days at the time of the accident. Dan Cobb, the representative of Alside Revere, testified via deposition that it was too early to tell, and that ten (10) days was not enough time to determine if there would have been a permanent offer. (Depo. 14 and 17) As had happened previously, the Claimant may have ended up with another assignment. Therefore, the permanent placement wages of any one employee with a subsequent company are not used or averaged.
5. The best method to most nearly approximate the Claimant's wages under Section 42-1-40 would be to average the Claimant's wages with the three "like employees" that were earning wages with the Employer, Snelling. It was represented by the Parties that the other three individuals worked in the same position as the Claimant. (Trial 8) To use one employee's wages would not be representative of the earnings, especially with the nature of the assignments. The average of the Claimant's wages and the three like employees would result in an average weekly wage of \$537.91, and a resulting compensation rate of \$358.62.

#### RULINGS OF LAW

1. "Average weekly wage" must be calculated by taking the total wages paid for the last four quarters immediately preceding the quarter in which the injury occurred. . . divided by fifty-two or by the actual number of weeks paid. . . .When for exceptional reasons the foregoing would be unfair, either to the employer or

employee, such other method of computing average weekly wages may be resorted to as will most nearly approximate the amount which the injured employee would be earning were it not for the injury." § 42-1-40.

2. Given that Claimant was working for a temporary staffing service, it is unknown whether Claimant would have been permanently hired by Alside Revere, and the shortness of the duration of Claimant's work at the assignment on which he was injured, Claimant has shown exceptional reasons why the methods for calculating his average weekly wage provided for in the first paragraph of § 42-1-40 would be unfair.
3. The method which would most nearly approximate his average weekly wage at the time of his injury is to average Claimant's wages with the three "like employees" that were earning wages with the Employer, Snelling.

#### **ORDER**

**IT IS THEREFORE ORDERED** that Claimant's average weekly wage shall be \$537.91, with a corresponding compensation rate of \$358.62.

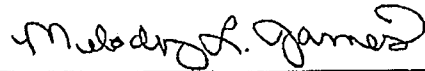
**IT IS FURTHERMORE ORDERED** that Claimant is entitled to a lump-sum payment by the Employer/ Carrier of back-owed temporary total and temporary partial disability in the amount of the difference between the amount that the Claimant was actually paid and the amount the Claimant should have been entitled using the average weekly wage and corresponding compensation rate as contained in this Order. Payment must be made with 30 days of the date of this Order.

**IT IS FURTHERMORE ORDERED** that the Motions to Quash the Subpoenas of Nicole Service, Angela Baldwin, and Jim Pascutti are GRANTED, as the sole issue to be decided at this time is the impact of the pay records of Jared Lampkin on the determination of Claimant's average weekly wage, and there is no testimony that could be elicited from these individuals that is relevant to the Alside pay records of Jared Lampkin.

**IT IS FURTHERMORE ORDERED** that any and all issues regarding additional discovery and motions were not before the undersigned at the Hearing on July 12<sup>th</sup>, 2012, as the sole issue to be decided was the impact of the pay records of Jared Lampkin on the determination of Claimant's average weekly wage.

All other issues are held in abeyance.

**AND SO IT IS ORDERED!**



Commissioner Melody L. James

**CERTIFICATE OF SERVICE**

**This is to certify the undersigned has this date served this order in the above entitled action upon all parties to this cause by sending an electronic copy hereof by electronic mail addressed to the attorney or attorneys for said parties or by depositing a copy hereof, postage paid, in the United States certified mail addressed to any unrepresented party.**

**September 30, 2013**

**By: Tamara Morris, Administrative Assistant to Commissioner James**

# South Carolina Workers' Compensation Commission

1333 Main Street, Suite 500  
P.O. BOX 1715  
Columbia, SC 29202-1715  
(803) 737-5723



WCC File #: 1116275  
Carrier File #: 041100021048  
October 1, 2013

## NOTICE OF APPELLATE HEARING

JOHN MCDANIEL v CAREER EMPLOYMENT PROFESSIONAL

**Subject:** Set on Review.  
**Date:** 10/14/13 at 01:30 PM  
**Location:** South Carolina Workers' Compensation Commission  
1333 Main Street, Suite 500  
Columbia, SC 29201

South Carolina Regulations 67-701 through 67-711 govern appeals before the South Carolina Workers' Compensation Commission. The claimant must attend when not represented by an attorney or when disfigurement is involved. Corporations must be represented by an attorney, and uninsured employers must attend.

Briefs are due according to prior notice and are governed by Regulation 67-705. For questions regarding this matter, please visit eCase Status at [www.wcc.sc.gov](http://www.wcc.sc.gov) or contact the Judicial Department of the South Carolina Workers' Compensation Commission at (803) 737-5739 or [appeals@wcc.sc.gov](mailto:appeals@wcc.sc.gov).

The Commission requests your presence thirty minutes prior to your scheduled oral argument.

This matter is set before: Panel B

CERTIFICATE OF SERVICE – This is to certify the undersigned has served this notice in the above entitled action upon all parties to this cause by sending a copy hereof by electronic mail or United States mail. Unrepresented parties were served by certified mail.

By: Eugenia Hollmon, SC Workers' Compensation, October 1, 2013

Party

Employee: JOHN MCDANIEL  
1387 Camp Road  
Unit C  
CHARLESTON, SC 29412

Attorney

Employer: CAREER EMPLOYMENT PROFESSIONAL  
Carrier: United Wisconsin Insurance Company

R. Mark Davis  
[mdavis@mgclaw.com](mailto:mdavis@mgclaw.com)  
843-576-2782

Employer: CAREER EMPLOYMENT PROFESSIONAL  
Carrier: United Wisconsin Insurance Company

Allison C Nussbaum  
[allison.nussbaum@mgclaw.com](mailto:allison.nussbaum@mgclaw.com)  
843-576-2925



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**From:** Crocker, Virginia <vcrocker@wcc.sc.gov>  
**Sent:** Friday, October 04, 2013 3:04 PM  
**To:** john mcdaniel  
**Cc:** Allison Nussbaum  
**Subject:** RE: receipt of order "scwcc # 1116275"

Mr. McDaniel

The matter on appeal on October 14, 2013 is your appeal of the Decision and Order of Commissioner James dated January 4, 2013. The order served on September 30, 2013 is not currently on appeal although you are still within the time period for appeal of that order.

Virginia L. Crocker  
Judicial Director  
803.737.5739 Voice  
803.239.7935 Cell

**From:** john mcdaniel [<mailto:jmcdaniel1982@gmail.com>]  
**Sent:** Friday, October 04, 2013 12:33 PM  
**To:** Crocker, Virginia  
**Cc:** Morris, Tamara; Hollmon, Eugenia; WCC Appeals,; Cannon, Gary; Allison Nussbaum; Deller, Valerie  
**Subject:** Re: receipt of order "scwcc # 1116275"

To all concerned,

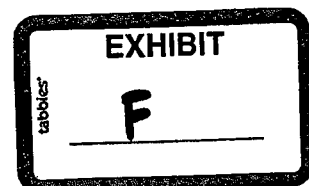
AS OF NOW, 12:30 PM, Oct. 4 2013, I have not recieved the signed order from the remand hearing.

I believe this email from Ms. Crocker amounts to defamation.

Ms, Crocker, are you in receipt of my email in which I stated "I HAVE NOT RECIEVED THE ORDER"?

Ms. Crocker, are you calling me a liar?

Sincerely, John McDaniel



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**From:** Roberts, Keith <keroberts@wcc.sc.gov>  
**Sent:** Tuesday, October 08, 2013 4:38 PM  
**To:** jmcDaniel1982@gmail.com  
**Cc:** Allison Nussbaum; Crocker, Virginia; Cannon, Gary  
**Subject:** FW: remanded or bifurcated? SCWCC file #1116275

Dear Mr. McDaniel,

Please allow this email to serve as a response to the questions you posed yesterday morning.

The purpose of Appellate Hearing set for October 14<sup>th</sup>, 2013 is to determine the issues your former attorney raised on the Form 30 filed on January 14<sup>th</sup>, 2013, which appealed the Decision and Order of Commissioner James dated January 4<sup>th</sup>, 2013. You were served with a copy of the Brief Request notifying you that the matter was on the appellate docket on June 19<sup>th</sup>, 2013. You were served with a notice of the time and date of the Oral Arguments on October 1<sup>st</sup>, 2013.

The most recent Decision and Order issued by Commissioner James following the Hearing on July 8<sup>th</sup>, 2013 is not subject to the pending appeal. On March 8<sup>th</sup>, 2013, your former attorney filed a motion to consider additional evidence. On April 15<sup>th</sup>, 2013 the Full Commission at Judicial Conference granted the motion to consider the additional evidence and set the additional evidence to be considered by the Appellate Panel at the same time it considered the issues you raised on appeal in your Form 30 dated January 14<sup>th</sup>, 2013.

However, you wrote an email on April 15<sup>th</sup>, 2013 demanding that the review hearing by the appellate panel be stayed and that the additional evidence be considered by the single Commissioner. Pursuant to your request, the review hearing was stayed, and a Hearing was held by Commissioner James on July 8<sup>th</sup>, 2013 to consider the additional evidence.

Commissioner James issued her Order on September 30<sup>th</sup>, 2013. A copy of the September 30<sup>th</sup>, 2013 Decision and Order was sent to your address via U.S. Certified Mail.

The Decision and Order of Commissioner James filed September 30<sup>th</sup>, 2013 is not under review at the Hearing set for October 14<sup>th</sup>, 2013. If you wish to appeal the Decision and Order of Commissioner James filed September 30<sup>th</sup>, 2013 you must do so in accordance with the South Carolina Workers' Compensation Act.

If you require further explanation of the rules and regulations of the Commission or of the legal implications of your case, you are permitted to retain a private attorney to represent you in all matters before the Workers' Compensation Commission.

Sincerely,

**J. Keith Roberts**

Attorney at Law  
South Carolina Workers' Compensation Commission  
1333 Main Street - Suite 500  
Columbia, South Carolina 29201  
Direct: (803) 737-5701  
[KeRoberts@wcc.sc.gov](mailto:KeRoberts@wcc.sc.gov)

**From:** john mcdaniel [<mailto:jmcdaniel1982@gmail.com>]  
**Sent:** Monday, October 07, 2013 11:46 AM  
**To:** Cannon, Gary; Crocker, Virginia; Allison Nussbaum  
**Subject:** remanded or bifurcated? SCWCC file #1116275

Mr. Cannon & Ms. Crocker,

Could someone please explain to me whether my case was remanded or bifurcated?

67-707 which the motion for new evidence was granted under, states the appeal will be stayed and reset on the docket after an order is received. It also outlines that the hearing may be reconvened at the discretion of the commissioner.

Read 67-707 in full then please answer the following questions please:

Was a remand order to the original hearing commissioner issued?

Did commissioner James reconvene the hearing?

When was notice sent that my claim had been reset on the docket?

What date and time was the Order dated Sept 30, 2013, received by pro se claimant John McDaniel?

Was the hearing notice for October 14, 2013 set prior to 3:52 p.m. October 4, 2013?

Will you forward me any evidence that my case has been bifurcated?

Sincerely,

John C. McDaniel

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE  
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING  
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA  
In The Court of Appeals**

John McDaniel, Employee, Appellant,

v.

Career Employment Professional D/B/A Snelling  
Staffing, Employer, and United Wisconsin Insurance Co.,  
Carrier, Respondents.

Appellate Case No. 2014-000186

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Appeal From The Workers' Compensation Commission.

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Unpublished Opinion No. 2016-UP-327  
Submitted May 1, 2016 – Filed June 22, 2016

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**REVERSED AND REMANDED**

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John McDaniel, of Charleston, pro se.

R. Mark Davis, Helen Faith Hiser, and Allison Cauthen  
Nussbaum, all of McAngus Goudelock & Courie, LLC,  
of Mount Pleasant, for Respondents.

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**PER CURIAM:** John McDaniel—an employee at Career Employment Professional d/b/a Snelling Staffing (Snelling Staffing), a temporary staffing agency—injured his left foot while working at his work placement site, Alside Revere. He filed a workers' compensation claim against Snelling Staffing and



United Wisconsin Insurance Company (collectively, Respondents). McDaniel appeals the Appellate Panel of the South Carolina Workers' Compensation Commission's (Appellate Panel) order. We reverse and remand.<sup>1</sup>

We find McDaniel's due process rights were violated because he was not afforded the minimum thirty days' notice before the Appellate Panel review hearing as is mandated in regulation 67-704 of the South Carolina Code of Regulations (2012). *See Jones v. S.C. Dep't of Health & Envtl. Control*, 384 S.C. 295, 316, 682 S.E.2d 282, 294 (Ct. App. 2009) ("Due process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses." (quoting *Olson v. S.C. Dep't of Health & Envtl. Control*, 379 S.C. 57, 69, 663 S.E.2d 497, 504 (Ct. App. 2008))); S.C. Code Ann. Regs. 67-704(A) (instructing the Appellate Panel to serve the parties "a Form 31, Notice of Review, at least thirty days before the date of review hearing" and include on the notice: "the date, place, time, purpose of the review hearing, and the filing date for the appellant's brief" (emphasis added)). McDaniel was first notified on March 29, 2013, of the review hearing set for April 16, 2013. This Appellate Panel review hearing was stayed while the single commissioner held a remand hearing. On October 1, 2013, after the single commissioner issued an order after the remand hearing, the workers' compensation commission sent notice of the Appellate Panel review hearing set for October 14, 2013. McDaniel thus received only fourteen days' notice. Because McDaniel was not afforded the minimum thirty days' notice, the Appellate Panel's December 19, 2013 order is reversed. This case is remanded to the Appellate Panel for McDaniel to be provided with the required thirty days' notice and his review hearing.<sup>2</sup>

**REVERSED AND REMANDED.**

**HUFF, KONDUROS, and GEATHERS, JJ., concur.**

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<sup>1</sup> We decide this case without oral argument pursuant to Rule 215, SCACR.

<sup>2</sup> Because reversing and remanding this issue is dispositive of the case, we need not reach McDaniel's remaining issues. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (holding an appellate court need not address remaining issues when the determination of a prior issue is dispositive of the appeal).

JUN 27 2015

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**From:** john mcdaniel [mailto:jmcdaniel1982@gmail.com]  
**Sent:** Saturday, October 12, 2013 6:34 PM  
**To:** Roberts, Keith; [klove@wcc.sc.gov](mailto:klove@wcc.sc.gov); [bcheeseboro@wcc.sc.gov](mailto:bcheeseboro@wcc.sc.gov)  
**Cc:** Allison Nussbaum; Crocker, Virginia; Cannon, Gary; [eboyd@wcc.sc.gov](mailto:eboyd@wcc.sc.gov); john mcdaniel; Elizabeth McDaniel  
**Subject:** Re: FW: FW: remanded or bifurcated? SCWCC file #1116275

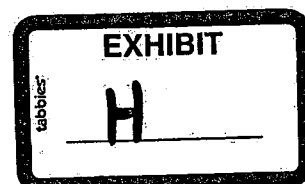
Please see attached Amended Form 30 for the upcoming review hearing in the above referenced WCC file.

Thanks  
John C. McDaniel

On Wed, Oct 9, 2013 at 10:52 AM, Roberts, Keith <[kroberts@wcc.sc.gov](mailto:kroberts@wcc.sc.gov)> wrote:

Dear Mr. McDaniel,

The appellate hearing was scheduled following the Hearing held by Commissioner James on July 8<sup>th</sup>, 2013 in accordance with the May 20<sup>th</sup>, 2013 judicial conference order. You should have been aware that the stay was lifted once the remanded issue was heard by Commissioner James on July 8<sup>th</sup>, 2013. Your case has not been "bifurcated" in the legal sense of the term. Bifurcation is a process that is sometimes used in Circuit Court that is inapplicable to workers' compensation. When a member of our staff informed you that your case had been "bifurcated", what they were trying to communicate to you was that, pursuant to your request on April 15<sup>th</sup>, 2013, the hearing by the appellate panel had been stayed and the issue of after discovered evidence had been separated from the remaining issues on appeal and remanded to the single Commissioner. As you are aware, the person who told you your case had been "bifurcated" is not an attorney and was merely trying to help you understand the status of your case. That person was wholly unaware that the verb "bifurcated" could be confused with a legal process that is used in civil and criminal trials that is unrelated to workers' compensation. Misunderstanding legal terms is a risk that you run by choosing to remain *pro se*. If you are having trouble understanding any aspect of your case, you are permitted to retain a private attorney to represent you in all proceedings before the Workers' Compensation Commission.



Since your case has not been "bifurcated" I am unable to forward you any records of the "bifurcation" of your case. However, if you would like a copy of your workers' compensation file, you may request it. There will be a base charge of \$20.00, plus \$0.50 for each page over twenty pages, plus the actual cost of postage.

I noticed that in your email below you did not send a copy to a representative of the Defendants. I am forwarding a copy of your email to Allison Nussbaum. In the future, you should Cc Ms. Nussbaum with any correspondence to the Commission, in order to avoid *ex parte* communication.

Since you made the decision to proceed with your claim *pro se*, you have relied heavily on the Commission's staff to assist you in understanding and pursuing your claim. We have made every effort to respond to your questions promptly and accurately. Various members of our staff have dedicated an inordinate amount of time to assisting you with your numerous inquiries. In order to best serve everyone involved and avoid future confusion, you are to direct all future correspondence with the Commission, other than official pleadings and motions, to my and Mr. Cannon's attention only.

Thank you in advance for your cooperation with our request.

Sincerely,

**J. Keith Roberts**

Attorney at Law

South Carolina Workers' Compensation Commission

1333 Main Street - Suite 500

Columbia, South Carolina 29201

Direct: [\(803\) 737-5701](tel:8037375701)

[KeRoberts@wcc.sc.gov](mailto:KeRoberts@wcc.sc.gov)

**From:** john mcdaniel [<mailto:jmcdaniel1982@gmail.com>]  
**Sent:** Tuesday, October 08, 2013 5:03 PM  
**To:** Roberts, Keith; Cannon, Gary  
**Subject:** Re: FW: remanded or bifurcated? SCWCC file #1116275


Mr Roberts,

This email does not address four concerns.

1. Was the appeal hearing scheduled prior to me receiving the 2nd order from Ms. James on October 4, at 3:52 pm?
2. When did I receive notice that the stay had been lifted?
3. When was I notified that my case had been bifurcated?
4. Can you forward any records of the bifurcation of my case?

Sincerley, John McDaniel

On Oct 8, 2013 4:41 PM, "Roberts, Keith" <[keroberts@wcc.sc.gov](mailto:keroberts@wcc.sc.gov)> wrote:

| Bio   | V-card | Location |
|---|--------|----------|
|  <p><b>Allison Nussbaum</b><br/>Attorney</p> <p>Main: 843-576-2900<br/>Direct: 843-576-2925<br/>Fax: 843-534-0805</p> <p>735 Johnnie Dodds Blvd.<br/>Suite 200<br/>Mt. Pleasant, SC 29464<br/><a href="mailto:allison.nussbaum@mgfaw.com">allison.nussbaum@mgfaw.com</a></p> |        |          |



Please consider the environment  
before printing this email.

South Carolina Workers' Compensation Commission  
1333 Main Street, Suite 500  
P.O. BOX 1715  
Columbia, SC 29202-1715  
803-737-5675



WCC File #: 1116275  
Carrier File #: \_\_\_\_\_  
Carrier Code #: \_\_\_\_\_  
Employer FEIN #: \_\_\_\_\_

Claimant's Name: John C. McDaniel SSN: 458-99-7462 Employer's Name: Career Employment Professional d/b/a Snelling Staffing  
Address: 1387 Camp Road, Unit C Address: \_\_\_\_\_  
City: Charleston State: SC Zip: 29412 City: Charleston State: SC Zip: \_\_\_\_\_  
Home Phone: 843 425 3000 Work Phone: \_\_\_\_\_ Insurance Carrier: United Wisconsin Insurance Company  
Preparer's Name: John C. McDaniel Law Firm: \_\_\_\_\_ Preparer's Phone #: 843 425 3000

**REQUEST FOR COMMISSION REVIEW**

Request for Commission Review by  claimant  employer (check one) Date of injury: 11/21/2011

The undersigned makes application for review of the findings of the Commissioner in the above-captioned case. The request for review is based on the following grounds: (State the grounds of your appeal in the form of questions presented. Each question presented must contain a concise statement of one proposition of law or fact. Refer to evidence by title and exhibit number. Use additional pages if necessary).

See attached addendum "Grounds for review 1-25"; Index of Exhibits; Attached Exhibits  
~~See attached~~ Request for extended oral argument

(Check one) Oral argument  is  is not requested. Appellant's request for oral argument is waived if not indicated on this form.

I certify that I have served this document pursuant to R.67-211 by delivering a copy to \_\_\_\_\_ Name

on the \_\_\_\_\_ day of \_\_\_\_\_ by \_\_\_\_\_  first class mail  personal service  certified mail.

Preparer's Signature: [Signature] John C. McDaniel 10/09/2013  
Title Date

Check this box if you are not represented by an attorney.

If the claimant appeals and is representing himself or herself, the Judicial Department will prepare the additional copies of this form and serve this form on the opposing party, R.67-701B. Otherwise, file the original and four copies of this form with the Judicial Department. The appeal must be postmarked no later than 14 days from the date of service of the Hearing Commissioner's decision, R.67-701 and R.67-205. Attach the filing fee to this form. Attach a Form 32 if you are unable to pay the filing fee. Refer to R.67-701 through R.67-711 for additional information.

WCC Form # 30  
Rev. 3/97

**\* AMENDED 30 \***

**REQUEST FOR COMMISSION REVIEW**



Claimant's loss of use and disability greatly exceeded this amount based upon the residual vocational impact to the Claimant and how disabling the injury actually is to the Claimant's physical and earning capacities.

- 6th: The Hearing Commissioner erred in determining the Claimant's Disability under scheduled loss in Ruling of Law #6 in her order dated January 4, 2013; the error being that only when injury is confined to a scheduled member and there is no impairment of any other part of the body is a scheduled loss warranted.
- 7th: The Hearing Commissioner erred in Finding of Fact #5 in her order dated January 4, 2013, that the Claimant reached Maximum Medical Improvement on August 13, 2012; the error being that the record reflects that one treating physician determined that Claimant was at MMI from an orthopedic stand point on August 13, 2013 and referred Claimant to other specialized physicians for further treatment and evaluation, one treating physician had not yet determined MMI and two independent medical evaluations determined that Claimant had not reached MMI.
- 8th: The Hearing Commissioner erred in finding as a fact and a ruling as a matter of law in Finding of Fact #5 and Ruling of Law #5 in her order dated January 4, 2013, that the Defendant's should receive a credit for all weekly benefits paid after the date of MMI; The error being the Single Commissioner should have found the Defendants were not entitle to a credit as the Claimant had not been able to return to work and no work had been offered, although the Claimant was ready and available to work, attempted to come back to the work within his restrictions and Claimant had been actively seeking other employment within his restrictions.
- 9th: The Hearing Commissioner erred in failing to find as a fact and rule as a matter of law that the Defendants should be subject to fines and penalties for late payments of Temporary Total Disability and Temporary Partial Disability Benefits; the error being that the record reflects payments were made at least 14 days after they were due, the records reflects that Defendant's failed to make timely payments on multiple occasions and the fine is mandated by statute and law.
- 10th: The Hearing Commissioner erred in failing to find as a fact and rule as a matter of law that the Defendants should be subject to fines and penalties for not authorizing Claimant's treating physicians' prescribed medical care and not authorizing treating physicians' medical care in a timely manner; the error being that the record reflects the Claimant did not receive all treatment and did not receive all treatment in a timely manner.
- 11th: The Hearing Commissioner erred in finding that the Claimant was not entitled to submit evidence and that the Hearing Commissioner had discretion to decline additional evidence related to the case at the remand hearing dated July 8, 2013; the

error being the Claimant has right to due process and equal protection under the law.

- 12<sup>th</sup>: The Hearing Commissioner erred in finding that the Claimant was not entitled to submit deposition testimony to impeach Dan Cobb's deposition testimony at the July 8, 2013 hearing; the error being that the Claimant has the right to due process and the right to impeach a deponent's testimony with any other deposition.
- 13<sup>th</sup>: The Hearing Commissioner erred in granting Defendant's Motion to Quash subpoena and proceeding with the hearing without enforcing Claimant's properly served subpoenas for the remand hearing dated July 8<sup>th</sup>, 2013; the error being that the Defendant's Motion to Quash was never properly served on the claimant, is without merit and Claimant is entitled to due process to include but not be limited to: the opportunity to subpoena witnesses/parties and question witnesses/parties under oath.
- 14<sup>th</sup>: The Hearing Commissioner erred in proceeding with the remand hearing with outstanding Motions to be heard; the error being that the Claimant is entitled to due process and procedural due process under the law.
- 15<sup>th</sup>: The Hearing Commissioner erred in not allowing the Claimant to move to compel treatment and compel compliance with records subpoena at the remand hearing dated July 8, 2013; the error being that the Claimant is entitled to due process under the law.
- 16<sup>th</sup>: The Hearing Commissioner erred in not ruling on Claimant's properly submitted proposed findings of fact after the hearing dated July 8<sup>th</sup>, 2013; the error being that the Claimant is entitled to due process and entitled to submitted proposed findings of facts which shall be ruled upon under the law.
- 17<sup>th</sup>: The Hearing Commissioner and the Commission erred in determining the scope and latitude of their discretion; the error being that the Claimant is entitled to due process and entitled to procedural due process under the law.
- 18<sup>th</sup>: The Commission and the Hearing Commissioner erred by abusing their discretion with procedural process; the error being that the Worker's Compensation Act must be construed liberally in order to protect the injured worker.
- 19<sup>th</sup>: The Commission erred in determining that the remand hearing was not governed by 67-601 through 67-615; the error being that the notice of hearing for the remand hearing dated July 8, 2013 outlined regulations applicable and Claimant is entitled to procedural due process under the law.

- 20th: The Commission erred in properly serving Claimant with Notice of Remand Hearing; the error being that the Claimant is entitled to due process under the law, to include but not be limited to; proper notification of issues to be addressed and proper notification of regulations to govern the hearing and 30 days notice of hearing.
- 21<sup>st</sup> The Commission erred in properly serving Claimant with Notice of Review Hearing and/or Notice of Lifting Stay of the Claimant's review hearing, to notify claimant of the resetting of the case on the appellate docket and placement on the appellate docket; the error being that the Claimant is entitled to due process under the law, to include but not be limited to; proper notification of issues to be addressed, proper notification of regulations to govern the hearing and 30 days notice prior to hearing.
- 22<sup>nd</sup> The Hearing Commissioner erred in holding all other issues in abeyance, the error being that an order that holds related issues in abeyance cannot be fully dispositive of the issue at hand.
- 23<sup>rd</sup> The Hearing commissioner erred in the service of the second order, being that the defendants counsel was notified by electronic mail and U.S. mail and the pro se claimant was served by registered mail only; the error being that all parties must be notified by the same means at the same time.
- 24<sup>th</sup> The Hearing Commissioner erred in failing to admit rebuttal evidence; the error being not allowing Claimant to respond to defendants statements with evidence.
- 25<sup>th</sup> The Hearing Commissioner erred in not adhering to hearing proceedings obligated by law, the error being that procedural law outlines the sequence of an administrative law court hearing, to include but not be limited to the opportunity to make closing statements, the right to submit substantial evidence into the record and the opportunity to question parties.

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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**RECEIVED**

JUN 02 2017

**SC Court of Appeals**

APPEAL FROM THE SOUTH CAROLINA  
WORKERS' COMPENSATION COMMISSION

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W.C.C. File No. 1116275

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John McDaniel, Employee,.....Appellant,

v.

Career Employment Professional  
d/b/a Snelling Staffing, Employer, and  
United Wisconsin Insurance Co., Carrier, ..... Respondents.

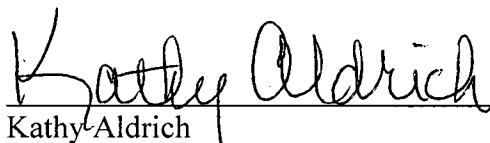
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**PROOF OF SERVICE**

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I certify that on the 30th day of May, 2017, I served the Respondents' **Motion to Strike or Correct Notice of Appeal** on John McDaniel by depositing a copy of it in the United States Mail, postage prepaid, addressed as follows:

John C. McDaniel, *Pro Se*  
4247 Stonebridge /Road, SW, Apt. 5  
Wyoming, MI 49519



Kathy Aldrich  
Legal Assistant to Helen F. Hiser  
McAngus, Goudelock & Courie LLC  
735 Johnnie Dodds Blvd., Suite 200  
P.O. Box 650007  
Mount Pleasant, South Carolina 29465  
(843) 576-2900

*Attorneys for Respondents Career Employment  
Professional d/b/a Snelling Staffing and United  
Wisconsin Insurance Co.*



**Reply To**

HELEN F. HISER  
Direct Dial: (843) 576-2930  
helen.hiser@mgclaw.com

May 30, 2017

**Via U.S. Mail**

The Honorable Jenny Abbott Kitchings  
South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, South Carolina 29211

RE: John McDaniel v. Career Employment Professionals d/b/a Snelling Staffing Services and United Wisconsin Insurance Company c/o United Heartland  
Date of Accident: November 21, 2011  
WCC File No.: 1116275  
Our File No.: 20638.12027  
Claim No.: 041100021048  
Appellate Tracking No.: 2017-001217

Dear Ms. Kitchings:

Enclosed please find the original and seven (7) copies of Respondents' Motion to Strike or Correct Notice of Appeal, and the original and one copy of the Proof of Service in the above-referenced matter. Please file the originals and return a clocked-in copy in the self-addressed, stamped envelope. Also enclosed is our firm's check in the amount of \$25 for filing the motion.

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

Yours truly,  
McAngus Goudelock & Courie, LLC

  
Helen F. Hiser

Enclosures

cc: John C. McDaniel, *pro se*

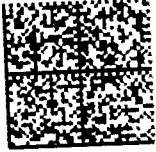
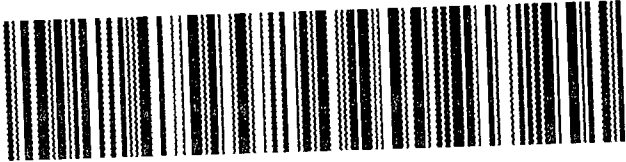
**RECEIVED**

JUN 02 2017

**SC Court of Appeals**

m|g|c | INSURANCE  
DEFENSE

POST OFFICE BOX 660007  
MT. PLEASANT, SC 29465

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| <b>P</b>  | US POSTAGE PAID<br>Pitney Bowes<br>ComBasPrice<br>Flat Rate Envelope |  |
|   | 05/30/2017<br>From 29464<br><br>024P0007778444                       |   |
| <b>PRIORITY MAIL 2-DAY™</b>   |  |   |
| Charleston Runner<br>McAngus Goudelock & Courie<br>735 Johnnie Dodds Blvd<br>Mt. Pleasant SC 29464                |  | Delivery Date 06/02/2017<br>294650207   |
|   |  | 0024  |
| The Honorable Jenny Abbott Kitchings<br>South Carolina Court of Appeals<br>PO Box 11629<br>Columbia SC 29211-1629 |  | <b>B012</b>   |
| <b>USPS TRACKING #</b>  |  |   |
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JUN 02 2017  
SC Court of Appeals