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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS
APPEAL FROM SOUTH CAROLINA WORKERS' COMPENSATION
APPELLATE CASE NO: 2015-001862
WCC FILE NO: 1107022

Sandy Chamblee

Appellant

v.

Anderson County Fire Dept.
And State Accident Fund, Carrier

Respondents

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JUN 08 2017

SC Court of Appeals

PETITION FOR RE-HEARING

RICHARD E. THOMPSON, JR.
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Attorney for Respondents
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1. Introduction

The undersigned, as attorney for the Appellant hereby submits this Petition for Re-Hearing pursuant to Appellate Practice Rule 221.

II. Points Overlooked or Misapprehended by the Court

a. **The Court erred in affirming the decision of the Appellate Panel of the South Carolina Worker's Compensation Commission which went to great lengths in its findings of fact to hold that the Appellant did not report to her treating physicians that she had been exposed to smoke at work for a time period of one and one-half years after the fire.** See Record on Appeal pages 10 through pages 13, as well as pages 27 and 31.

III. Argument

In point of fact, the Appellant testified that she report the incident to her employer on the same date it occurred. See Record on Appeal page 97 and page 98. This same date of notification is also shown on the First Report of Injury. See Record on Appeal page 13 and page 31.

The Court of Appeals, in its opinion filed May 24, 2017, held that this matter was not preserved for appellate review. This holding is in error for two reasons. First, the First Report of Injury is required by statute to be filed by the employer under 1976 South Carolina Code Section 44-15-20 and has been held to be an admission by the employer based on the cases cited by Appellant in her final brief on page 19. Second, the question of the significance of the employer notification did not arise until after the Hearing Commissioner had denied the Appellant's workers' compensation claim. This issue was argued before the Appellate Panel of the South Carolina Workers' Compensation Commission. See Record on Appeal pages 217-218.

In the recent decision of the South Carolina Court of Appeals in the case of Anderson County v. Joey Preston and the South Carolina Retirement System, Appellate Case, No. 2013-002499, the Court held that the question of whether a quorum was present first arose when the Circuit Court

invalidated the votes of four Council members who were held ineligible to vote in the Court's Order. In other words, whether or not a quorum existed did not arise as a matter of importance until the Court ruled on the case. An argument that this particular issue was not preserved for review was rejected by the Court in the Preston case. See pages 14 and 15 of the opinion.

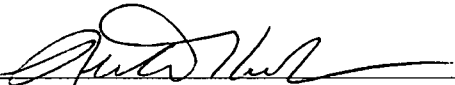
In the case at bar, the importance of when the Appellant first complained of an injury at work due to smoke inhalation on May 26, 2011 did not arise until the Hearing Commissioner of the South Carolina Workers' Compensation Commission ruled against her claim because all the while there was a First Report of Injury filed of record indicating the employer was notified of the injury on May 26, 2011. See Record on Appeal, page 368-369. Under the reasoning of the Preston case, the fact that the Workers' Compensation Commission was going to disregard the information contained in a lawfully required notice did not become crucial until the final decision of the Workers' Compensation Commission. Until that time, based on the authorities cited on page 19 of Appellant's Final Brief, the information contained on the First Report of Injury was unchallenged and could be relied upon by the Appellant.

b. The Appellant also preserves for the record her argument that the decision in this case is in error to the extent that it denies her claim for workers compensation benefits. Appellant relies on her agreements previously submitted to the Court on this point.

IV. Conclusion

Based on the above, the Appellant respectfully request that the Court reconsider and re-hear this matter, issue its decision holding at that the Appellant is entitled to and should receive workers' compensation benefits and award such other relief as is consistent therewith.

THOMPSON & KING LAW FIRM


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Dated:

June 8, 2017

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Clerk of the S.C. Court of Appeals
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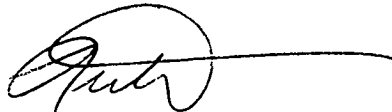
RE: Sandy Chamblee vs Anderson County
Fire Department & State Accident Fund
Case No: WCC File: 1107022

Dear Sir/Madam:

Enclosed for filing is the original and six copies of the Petition for Re-Hearing in regard to the above case. Also enclosed, is a check in the amount of \$25.00 for the filing fee.

Thank you for your help in this matter.

Very truly yours,



Richard E. Thompson, Jr.

RET:ddp
enclosure
cc: Ian C. Gohean, Esquire