

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
Commissioner Gene McCaskill

RECEIVED

JUN 12 2017

SC Court of Appeals

Appellate Case No. 2016-001457

Terry McCall #233236Appellant,

v.

Trojan Labor and Hire Quest, LLCRespondents.

RETURN TO MOTION FOR LEAVE

TO: THE HONORABLE JUDGES OF THE COURT OF APPEALS:

Pending before this Court is Appellant Terry McCall's ("Appellant") Appeal from the Workers' Compensation Commission's denial of Appellant's request to waive the filing fees and dismissing his appeal. Appellant filed his final brief on May 31, 2017. Along with his final brief, Appellant filed a Motion for Leave to file his Motion for Newly Discovery Evidence in the South Carolina Workers' Compensation Commission's

Office. Respondents Trojan Labor and Hire Quest, LLC (“Respondents”) offer this Return to Appellant’s Motion.

LAW/ANALYSIS

On May 31, 2017, Appellant filed a “Motion for Leave” “to allow Appellant the right to file his Motion for Newly Discovered Evidence, in the S.C. Workers Compensation Commission Office.” The Court of Appeals does not have jurisdiction to consider Appellant’s Motion. In the alternative, Appellant has failed to comply with S.C. Code of Regulations R. 67-707. Accordingly, this Court must deny Appellant’s motion.

The South Carolina Code of Regulations R. 67-707 governs motions based on additional and newly discovery evidence. The Regulation provides:

- A. When additional evidence is necessary for the completion of the record in a case on review the Commission may, in its discretion, order such evidence taken before a Commissioner.
- B. When a party seeks to introduce new evidence into the record on a case on review, the party shall file a motion and affidavit with the Commission's Judicial Department.
- C. The moving party must establish the new evidence is of the same nature and character required for granting a new trial and show:
 - (1) The evidence sought to be introduced is not evidence of a cumulative or impeaching character but would likely

have produced a different result had the evidence been procurable at the first hearing; and

- (2) The evidence was not known to the moving party at the time of the first hearing, by reasonable diligence the new evidence could not have been secured, and the discovery of the new evidence is being brought to the attention of the Commission immediately upon its discovery.
 - (a) File the motion and affidavit with proof of service as soon as the new evidence is discovered. The motion and affidavit may be filed with the Form 30.
 - (b) Serve the opposing party pursuant to R.67-215.
 - (c) Oral argument will not be heard on the motion. The Commission will act upon the motion and issue an order before the review hearing is held.
 - (d) If the Commission grants the motion, the review hearing is stayed. The case will be remanded to the original Hearing Commissioner who may, unless otherwise provided, reconvene the hearing or admit the deposition of a witness into the record.
 - (e) The original Hearing Commissioner will issue his or her findings and recommendations in the form of an order to the Commission and the parties.
 - (f) Upon the receipt of the Commissioner's order, the Judicial Department will reset the case on the review hearing docket.
 - (g) If the Commission denies the motion, the case may remain on the review hearing docket unless otherwise provided.

The only issue before the Court is whether the Commission erred by denying Appellant's request to waive the filing fees and dismissing his appeal. (December 1, 2016 Order, attached as **Exhibit A**). Appellant maintains that his motion "could help speed up and clear up a clerical error[] made by the S.C. Workers['] Compensation Commission Judicial Office filing department."

Initially, Respondents contend this Court lacks jurisdiction to consider Appellant's motion. The Workers' Compensation Commission has jurisdiction over Motions for Newly Discovered Evidence. See S.C. Code Regulations R. 67-707(A). Accordingly, Appellant's motion must be denied.

In the alternative, if this Court has jurisdiction, Respondents aver that while Appellant is asking for leave to file his Motion for Newly Discovery Evidence, Appellant must still comply with Regulation 67-707. Appellant has failed to file a supporting affidavit or identify the evidence he alleges is newly discovered. The failure to do the same is futile to Appellant's motion.

Respondent maintains that all evidence relevant to the issue on appeal is currently before the Court. Respondents cannot envision any evidence that could be construed as "Newly Discovered" that would affect the pending Appeal and sole issue before the Court: Whether the Commission erred by

denying Appellant's request to waive the filing fees and dismissing his appeal.¹

CONCLUSION

Based on the aforementioned, Respondents respectfully request the Court deny Appellant's Motion for Leave to file Motion for Newly Discovered Evidence.

Respectfully Submitted,

COLLINS & LACY, P.C.



Kelsey J. Brudvig

kbrudvig@collinsandlacy.com

Post Office Box 12487

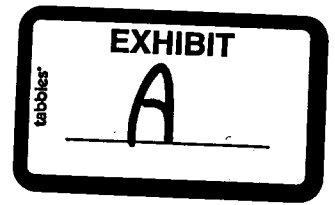
Columbia, South Carolina 29211

(803) 256-2660 (voice)

ATTORNEYS FOR RESPONDENT

June 12, 2017
Columbia, South Carolina

¹ Respondents note that they have not filed briefing in opposition of Appellant's appeal. In lieu of briefing, Respondents submitted correspondence dated January 9, 2017, advising the Court of Respondents' position. Specifically, Respondents believe Appellant's Form 30 was timely and the Commission erred in failing to grant Appellant's Form 32, which was Appellant's request to waive the filing fees associated with the appeal. (Jan. 9, 2017, Correspondence, attached as **Exhibit B**).



The South Carolina Court of Appeals

Terry McCall #233236, Appellant,

v.

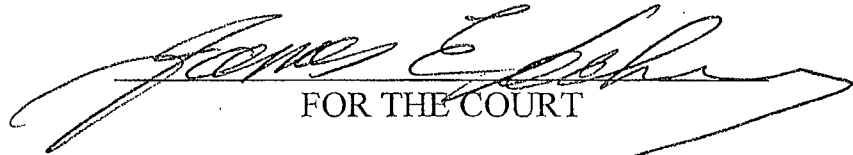
Trojan Labor and Hire Quest, LLC, and Respondents.

Appellate Case No. 2016-001457

ORDER

On September 30, 2016, this court dismissed this appeal, holding that this court lacks jurisdiction to review an order of the single commissioner. Appellant has filed a motion, which we construe as a motion to reinstate the appeal, explaining that he filed an appeal with the Workers' Compensation Commission, but the Commission denied his request to waive filing fees and dismissed his appeal. Appellant attached a memorandum from the Commission, which states that the Chair of the Commission rejected Appellant's request to waive the filing fees.

Because the Appellant appealed the single commissioner's order to the Commission and the Commission dismissed his appeal after Appellant's request to waive fees was denied, we reinstate this appeal. The scope of this appeal is limited to issues stemming from the denial of Appellant's request to waive fees and the dismissal of his appeal to the Commission. This court will not consider any issues stemming from the single commissioner's order.


FOR THE COURT

Columbia, South Carolina

FILED

December 1, 2016

cc:

Terry McCall

Ellen M. Adams, Esquire

Kelsey Jan Brudvig, Esquire



Kerri A. Rupert | D: 803.255.0421 | E: krupert@collinsandlacy.com



January 9, 2017

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

Re: Terry McCall #233236, Appellant v. Trojan Labor and Hire Quest, LLC,
Respondents
Appellate Case No. 2016-001457
C&L File No. 001840-00804

Dear Ms. Kitchings:

On September 30, 2016, this Court dismissed this appeal, finding the Court lacked jurisdiction to review an order of the single commissioner of the South Carolina Workers' Compensation Commission. Appellant then filed a motion, which this Court construed as a motion to reinstate the appeal, in which Appellant argued he tried to file an appeal with the Commission, but the Commission denied his request to waive the filing fee and ultimately dismissed his appeal.

On December 1, 2016, Judge Lockemy issued an order reinstating the appeal and ordered the parties to address only the issue of whether the Commission erred by denying Appellant's request to waive the filing fees and dismissing his appeal. (Dec. 1, 2016 Order, attached as **Exhibit A**). Appellant filed a voluminous initial brief addressing this issue and many others.

After receiving the December 1 order and reviewing this issue, Respondents believe Appellant timely filed his Form 30 to appeal to the Appellate Panel. Pursuant to South Carolina Regulation 67-205, documents delivered to the Commission are generally considered filed on the date they are received by the Commission's office. See 23 S.C. Code Ann. Regs. 67-205(B) (1976). However, several forms, including the Form 30, are deemed filed on the date of the accompanying certificate of service properly addressed to the Commission. 23 S.C. Code Ann. Regs. 67-205(D) (1976).

Here, the single commissioner served a copy of its order on February 24, 2016. (Single Commission Order, p. 20, attached as **Exhibit B**). Appellant had fourteen days to request Commission review of the single commissioner order by filing a Form 30. See 23 S.C. Code Ann. Regs. 67-701(A). In other words, Appellant had to file the Form 30 by March 9. Appellant's handwritten certificate of service accompanying his Form 30 is dated March 8. (Form 30, attached as **Exhibit C**). It appears the Commission likely committed a clerical error by dating the Form 30 as March 11, which was the date of receipt by the Commission. The Commission should have accepted Appellant's Form 30 as filed on March 8 according to the certificate of service.

The Honorable Jenny A. Kitchings
January 9, 2017
Page 2

Because Appellant's Form 30 was timely, the Commission should have granted his Form 32, which was his request to waive the filing fees associated with the appeal. The parties would waste considerable time and expense by briefing this issue when the case should likely be remanded to the Workers' Compensation Commission to allow the Commission to accept Appellant's Form 30. Although this Court has instructed the parties to brief this issue, Respondents write to the Court to respectfully request instructions on how to proceed with this appeal in order to dispense with it efficiently. If the Court issues an order advising the parties to brief this issue, Respondents respectfully requests an additional thirty days from the date of any order to file its initial brief.

With warmest regards,

Sincerely,



Kerri A. Rupert

KAR/mmm
Enclosures

cc: Terry Edward McCall

The South Carolina Court of Appeals

Terry McCall #233236, Appellant,

v.

Trojan Labor and Hire Quest, LLC, and Respondents.

Appellate Case No. 2016-001457

ORDER

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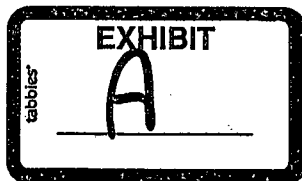
Because the Appellant appealed the single commissioner's order to the Commission and the Commission dismissed his appeal after Appellant's request to waive fees was denied, we reinstate this appeal. The scope of this appeal is limited to issues stemming from the denial of Appellant's request to waive fees and the dismissal of his appeal to the Commission. This court will not consider any issues stemming from the single commissioner's order.


FOR THE COURT

Columbia, South Carolina

FILED

December 1, 2016



cc:

Terry McCall

Ellen M. Adams, Esquire

Kelsey Jan Brudvig, Esquire

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO, 1410083

TERRY MCCALL,
EMPLOYEE/CLAIMANT,

vs.

TROJAN LABOR/HIRE QUEST,
EMPLOYER

AND

ACE AMERICAN INSURANCE COMPANY,
CARRIER/DEFENDANTS

DATE OF HEARING: August 28, 2015

APPEARANCES: Terry McCall appeared at the hearing pro se; the Employer and Carrier were represented by Collins & Lacy, PC with Christian E. Boesl, Esquire appearing.

PURPOSE OF HEARING: To determine the issues set forth on all Forms 50 and 51 filed by the parties and on the Claimant's various motions.

COMMISSIONER: Gene McCaskill, Commissioner

FILED: February 24, 2016

FILE NO. 1840-804

FEB 26 2016

REC'D. Ema/Var
COLLINS & LACY



- 1 -

Form 30
PL 3/9
-cca

APA SUBMISSIONS

The Claimant submitted no documents or medical records pursuant to the Administrative Procedures Act. During the course of his testimony, he presented medical records from the Employer/Carrier's brief and some additional medical reports not contained in the Carrier's submission which were marked as Exhibit 1 for the Claimant.

The Employer and Carrier submitted the following documents pursuant to the Administrative Procedures Act:

1	Greenville Memorial Hospital	12/27/2007-10/11/2014	1-168
2	Bon Secours St. Francis Hospital	02/10/2012-07/20/2014	169-212

The Carrier submitted the following exhibits:

A	ISO ClaimSearch Report	07/23/2014	213-225
1	SLED Report	07/23/2014	

STIPULATIONS

Prior to the commencement of the hearing, the Claimant was advised that he was appearing without the benefit of counsel. He indicated he wished to proceed with the hearing. All parties were provided timely and proper notice of the date, time, purpose and location of the hearing. The parties stipulated to an average weekly wage of \$558.75 yielding a compensation rate of \$372.52. There were no objections to jurisdiction, before the S.C. Workers' Compensation Commission, venue at Broad River Correctional Institute, or the admission into evidence of the Employer/Carrier's APA Submissions. The Commission's file was made a part of the record with the exception of self serving declarations and unstipulated medical reports.

STATEMENT OF THE CASE

The Commission's file reveals that Claimant was originally represented by The Joel Beiber Firm with attorney Paul Rathke appearing. Pursuant to Mr. Rathke's motion to be relieved, an Order was entered by Commissioner Beck on October 14, 2014 relieving Mr. Rathke as counsel. A Form 50 Hearing Request was filed by McCall on November 18, 2014 alleging injuries to his neck, right shoulder, back, right hand, wrist and teeth on July 4, 2014 when he tripped over a wire and fell. He sought additional medical treatment for his back, right shoulder, right wrist, right hand, neck and teeth. Finally, he sought temporary total disability benefits for an indeterminate time period.

On December 17, 2014, the Employer and Carrier timely filed a Form 51 denying the claim in its entirety. The Carrier specifically denied that McCall suffered an injury by accident arising out of the course and scope of his employment and noting that McCall has a very long history of treatment for his back, neck, right shoulder and right hand. The Carrier further asserted that McCall had a long history of medical treatment for all of the alleged body parts noted on the Form 50 and that Claimant was no greater disabled as a result of his complaints than when he entered the job site. The Carrier denied timely notice and denied McCall's entitlement to any benefits under the Act.

Pursuant to the Forms 50 and 51, a hearing was set before Commissioner Wilkerson in Greenville, South Carolina on April 1, 2015. As a result of that hearing, Commissioner Wilkerson issued an Order on April 8, 2015 returning the file to the general files to allow the Claimant additional time to retain counsel and allowing the Carrier to file a Form 19 seeking closure of the claim in the event the Claimant failed to pursue benefits within sixty (60) days. By

correspondence to the Commission dated April 22, 2015, the Claimant advised that he was requesting another hearing.

A notice was issued setting the case for a hearing before Commissioner James on July 8, 2015 on the Forms 50 and 51 in Greenville, South Carolina. On May 18, 2015, the hearing was postponed due to Claimant's transfer from Greenville, South Carolina to Broad River Correctional Institute. The hearing was reset for August 28, 2015 at Broad River Correctional Institute before Commissioner McCaskill. On August 18, 2015, McCall filed a Motion to Amend his Form 50 to assert a repetitive trauma claim. All parties were present and the record in the case was closed at the conclusion of the hearing.

The Claimant sought a determination of compensability for injuries to his neck, back, right shoulder, right wrist, right hand and for a hernia. He also asserts claims for depression, anxiety and insomnia. On February 7, 2015, it appears that McCall asserted claims for injuries to the right elbow as well as his left foot. McCall alleged entitlement to temporary total disability benefits from June 30, 2014 and continuing as well as additional medical treatment for all these body parts.

The Carrier denied that McCall was injured in the course and scope of his employment, that any injury occurred on the Hire Quest job site, that there was no medical evidence to support McCall's claims for repetitive trauma or a hernia. The Carrier further asserted that the record would establish that McCall made 32 visits to the Emergency Room in the eighteen months prior to June 28, 2014 seeking narcotic medications. Finally, the Carrier maintained that McCall has made thirteen (13) prior workers' compensation or insurance motor vehicle claims prior to this case and that the Claimant simply lacks credibility. (Transcript pp. 9-10)

At the hearing, the Carrier consented to the amendment of the Claimant's Form 50 to include a repetitive trauma injury as well as another accidental injury on June 30, 2014 to the same body parts which are the subject of the July 4, 2014 claim. McCall consented to proceeding on both claims (Transcript p. 12). After discussion with the hearing commissioner regarding the requirements set forth in S.C. Code Ann. Section 42-1-172 to establish a repetitive trauma claim, McCall withdrew his claim alleging repetitive trauma. (Transcript p. 16). In addition, he withdrew his claim for chipped teeth, acknowledging that the tooth "was already fractured at one point in time." (Transcript p. 13).

Following the hearing and the conclusion of the record in the case, McCall filed a series of Motions as follows:

September 10, 2015 "Motion To Amend Record; Motion for Rehearing on Motion to Leave Record Open, Until All Physician Records are Obtained and Presented As Evidence, Violation of Civil Rule 609(A)(2) – Due Process Equal Protection of Law; Motion to Suppress Non Convictions Used At Hearing"

September 13, 2015 "Motion to Compel Single Commissioner Subpoena Claimant's Medical File"

September 14, 2015 "Motion to Stay Hearing Decision to Allow Ample Time for Employee to Obtain Medical File by Which the Defense Counsel and Carrier Had Promised to Obtain but Failed."

These motions will be addressed in this Order.

Evidence of the Case

Testimony:

Terry McCall was the sole witness to testify at the hearing. Prior to his testimony, McCall advised that he was waiving his right to legal counsel and was going forward representing himself. (Transcript p. 5). He was also advised by the hearing commissioner that the hearing commissioner was not representing him in the hearing. (Transcript p. 14). McCall testified he was seeking temporary total disability benefits from June 30, 2014 and continuing as well as additional medical treatment for his shoulder, wrist, hand, back and neck.

McCall testified that when he started working for Trojan Labor, he was in a working management program called Turning Point. (Transcript pp. 17 and 18). He went to work with an electrical company named Recore Electrical out of Charlotte, North Carolina. They were working in a plant in Simpsonville, South Carolina running cable from the bottom floor, first floor and second floor.

On June 30, 2014, he was putting in cable trays when another worker yanked one of the cables tripping him and causing him to fall on his right side injuring his shoulder, back, wrist and hand. (Transcript pp. 18-19). McCall further testified that on June 30, 2014 he was also pulling cable and felt his wrist pop and his hand started burning with pain through his wrist and up his forearm. (Transcript p. 20). Later, he testified that he also pulled his "groin area" during the time he was pulling cable but pulled it more when he fell. At the time he fell, he testified he was "tied off" with a harness because he was working on the third floor and the harness "yanked" him back. (Transcript p. 21). He further testified that he injured his groin in the fall because he was straddling a cable tray when he fell. (Transcript pp. 20-21). McCall testified that he went to the

hospital following the fall and referred the hearing Commissioner to the Defendant's APAs at page 142.

Following the accident on June 30, his supervisor took him back to the trailer to sit down and rest. He wrapped his hand and told him to take the remainder of the day off. The supervisor asked him if he needed to go to the hospital and if he would be able to continue working. McCall responded that he hoped he could continue because he didn't want to lose his job. (Transcript p. 23). McCall testified that he continued to work but his supervisor didn't want him up in high places after his accident on June 30. (Transcript p. 24).

McCall stated that on July 4, 2014, he was working on the third floor, putting in cable trays. There was another company working in the area. McCall stated that one of the employees with another company yanked a wire unexpectedly. McCall fell over into a hole which wedged his right shoulder and neck. He testified that in that accident he injured his back, shoulder, wrist and hand. (Transcript p. 25). McCall maintains that he called Trojan Labor on July 14 or 15, 2014 and spoke with Curtis about his injuries. (Transcript p. 26). At this point, McCall had left Turning Point which was the entity through which he was receiving work on the job site. (Transcript p. 27).

McCall testified that he hasn't been able to use his shoulder or raise his shoulder above his head. He cannot dress himself and must have people in prison help him dress. (Transcript p. 28). McCall offered an affidavit from someone who allegedly saw him fall. The Carrier's objection to the introduction of the affidavit as hearsay which deprived the Carrier of the right of cross examination was sustained. (Transcript pp. 29-30).

McCall further offered several medical records. Although the Carrier was not provided these prior to the hearing, they were admitted into the record without objection as Claimant's Exhibit 1.

McCall maintains that since his July 4, 2014 accident, he has not been able to work, not because of his incarceration but because of his injuries. (Transcript pp. 31). He denied the ability to lift five pounds, raise his right arm over his head, and complained of a tingling sensation that runs up his neck, across his shoulders and into his head. (Transcript p. 32). He complained of constant pain in his back at a level of seven. (Transcript p. 33). He complained of ongoing pain in his groin and on the right side of his testicle.

On cross examination, McCall acknowledged that he testified that he had never filed anything "frivolous". He acknowledged that "frivolous" means something that is untrue. (Transcript p. 35). He denied a 1988 conviction of conspiracy on narcotic charges. (Transcript p. 36). McCall admitted a 1990 conviction on fraud on prescriptions but denied he actually committed the fraud although he did plead to the charge. On December 2, 2014, he was arrested and convicted for giving false information to a law enforcement office when he gave a police officer his brother's name instead of his own. (Transcript p. 37). The SLED report was admitted into evidence for the sole purpose of impeaching his testimony at the hearing about not being convicted of charges he denied at the hearing. (Transcript p. 37).

McCall acknowledged that he has given inaccurate and false information to medical providers about a prescription. (Transcript p. 38). McCall was further cross examined regarding a GMMC medical report from December 20, 2013 found at APA pages 83-85. McCall denied that he had been to the emergency room nineteen times prior to that visit for medication related

issues. He noted that he had been to the hospital on several occasions for psychiatric issues when he was homicidal or suicidal. (Transcript p. 40).

McCall testified that he had preexisting low back pain; preexisting hand injury, pre-existing shoulder injury; and a pre-existing wrist injury. He denied that he continued to seek treatment for his wrist and pre-existing injuries from 2012 through the day he was injured. (Transcript p. 42).

McCall testified that he had filed another Form 50 describing the June 30, 2014 accident. He went to the doctor on July 16, 2014. In that record, under chief complaint it states "Patient presents for the evaluation of a fall while running; walking onto a hard surface and landing on the right side." (APA p. 143). McCall denied that he told this to the doctor and maintains he told him he fell while pulling wire. (Transcript p. 45). The medical report further indicates that it occurred four days prior or on July 12, 2014. This was inconsistent with his testimony that the accident occurred on June 30, 2014. Further, in the social history, McCall denied any prior alcohol or drug abuse problems. (Transcript p. 47).

McCall acknowledged that he had the medical reports submitted by the Carrier prior to the hearing which were supplied by Ellen Adams. (Transcript p. 48). He acknowledged that he had reviewed the evidence prior to the hearing (Transcript p. 48). Although McCall testified that he could not lift anything over five pounds, he acknowledged that he reported to the hospital in October, 2014 that he injured himself while moving furniture. He testified that he was "maneuvering" furniture by trying to push it around but did not pick up any furniture. (Transcript p. 52). Finally, McCall acknowledged that prior to going to work for Trojan Labor, he was going to try to get social security disability as the result of injuries to his shoulder and wrist suffered in a car accident.

On redirect examination, McCall testified that he has completed high school and two years of technical college where he completed his paralegal certificate. He maintained that he cannot work because of his injuries.

At the conclusion of the hearing, the record in the case was closed.

Medical Evidence

The Carrier submitted 212 pages of medical records pursuant to the Administrative Procedures Act dating from December 27, 2007 through October 21, 2014. The reports from Greenville Memorial are summarized as follows:

01/05/2012 – Back Injury – pain. Patient states mid to lower back pain and pain to left shoulder x2 days. Denies trauma or injury. Patient rates pain as 9, flare up of lower back pain started yesterday. (APA p. 3)

03/04/2012 – MVA – major. Pt involved in head on collision in which there was 1 foot of intrusion to drivers side. His steering wheel was against his chest & abdomen. He complains of chest wall pain that increases with movement and inspiration. He also complains of mouth pain. He denies loss of consciousness. Thinks his blood sugar may have been low and made him cross the centerline. Patient was driver. He was wearing a lap/shoulder belt. Dental fractures. Chest contusion. Hand skin tear. Multi-substance abuse. Transported by police. Blood drawn per police request. Patient arrested for possible DUI. (APA p. 6)

04/30/2012 – MRI right shoulder w/o contrast.

07/01/2012 – Low back pain radiating down right hip/upper leg since yesterday. Complains of aggravating his sciatica helping his brother lift some debris in his yard. Says the pain is in back of right hip & goes to knee. (APA p. 21)

07/05/2012 – Low back pain radiating down right buttock since yesterday. Patient left without being seen. (APA p. 25)

07/06/2012 – Pt states, “My sciatic nerve is flared up. I fell back in November and it flared back up 2 weeks ago. Wednesday morning it got worse.” Denies recent trauma. States may have “over done it” recently with work. States has been treated for sciatica in past. (APA p. 27)

07/22/2012 – Chronic lower back and sciatica pain. Also needs right shoulder examined for work related injury. Patient has been warned that if continues to come here and not following up with his PCP or workers’ comp we will not give him any narcotic for his chronic pain. (APA p. 31)

07/29/2012 – Nasal cellulitis w/possible abscess. Anxiety. History of MRSA in past. (APA p. 35)

05/22/2013 – Transfer from Cannon Memorial Hospital. Temp of 107 and seizure. Patient not able to stay in hospital overnight & left against medical advice. Diagnostic tests from Cannon resulting in THC – positive, cocaine – positive, amp – positive, MDMA – positive. (APA p. 27)

06/24/2013 – Right lower back pain radiating down right leg. Hx of sciatica. Fall from ladder less than 3 ft onto hard surface 3 days ago. (APA p. 42)

06/27/2013 – Right shoulder pain from injury last week. Has not been able to follow up with ortho yet. Seen 3 days ago. Rx for Lortab & Prednisone. Pain worse & unble to tolerate Lortab. Also c/o increased right shoulder pain due to aggravation of chronic problem. (APA p. 47)

07/02/2013 – Back pain. Left without being seen. (APA p. 50)

07/13/2013 – C/o “sciatica” pain in right leg & soreness in right shoulder. Started last night. Twisted yesterday & woke up with right sided back pain radiating down leg. Hx of sciatica & does not follow up w/family or back doctor for insurance reasons. Denies injury. (APA p. 51)

07/17/2013 – Brought in by EMS. States he hurts so bad he doesn’t care whether he lives or dies, reports he didn’t follow up w/mental health, but wants help for his depression. Suicidal ideation. Recent admission to MIP. Pt is malingering. UDS positive for illicit street drugs. States narcotic script has been stolen. Continues to claim that he is suicidal. Patient is not suicidal or homicidal. Patient told nurse & tech if we discharge him he’s gonna kill himself. (APA p. 54)

08/05/2013 – Chronic back pain. Long-standing back pain. Right sided & radiating down right leg. No recent trauma. MRI scheduled for tomorrow & is following up with Southeastern Spine. (APA p. 67)

08/06/2013 – MRI lumbar spine w/o contrast. Maturation changes in the disc and facets from L3 to S1 with moderate foraminal stenosis bilaterally at L4-5 and L5-S1. No significant central canal stenosis. Minimal anterolisthesis at L3-4. (APA p. 72)

08/24/2013 – Chronic lower back pain & right sciatica. Has appt w/pain management next week for same. Has had 1st appt w/Dr. Mullinax the first week of September. He is out of meds. (APA p. 74)

09/11/2013 – Right back pain radiating down right leg. Onset yesterday. Pt states it feels like his sciatica. Pt also has small abscess to left wrist. Pt has been painting at home & going up & down a ladder. (APA p. 77)

12/14/2013 – Presents to ER w/lower back pain. States, “it is sciatic nerve.” Pt injured back in 2007 & it is worse today. Has had multiple prior visits to ED for back pain. No new injuries. “It is only helped w/the Norco.” Went to discharge patient & he became very belligerent & talking loudly demanding a shot for pain and a higher dosage of Lortab. Pt became even more agitated

cursing at Dr. McManus, stating he, "was going to report you for not doing your job, you can't treat me"; as patient continued to verbalize he became even more aggressive, clinching fists, face reddened, eyes wide; Dr. McManus attempted to explain to patient that he was not going to change his script. (APA p. 80)

12/20/2013 – Pt states he was walking across street & car pulled out in front of him & hit him. C/o right wrist pain, bilateral shoulder pain & lower back pain. EMS reports there were multiple witnesses that all stated that the car did not hit patient. No evidence of acute injury. Pt quite ambulatory & abusive to staff. Demanding narcotics. This is his 19th visit to ER w/many pain related issues & reports of similar behavior. Pt informed narcotics will not be given. (APA p. 83)

01/15/2014 – Presents w/suicidal ideation. Complains of having family problems. Has had thoughts of suicide for past 2 days & thoughts of harming others. Patient denies having plan. Pt is unemployed & unable to work because of shoulder, wrist & back problems. Sees Dr. Sean Bryan for pain management. Last Rx 1/8/14 for Norco. Followed by New Horizons & received Neurontin, Protonix & Tramadol. Pt is also homeless. (APA p. 90)

02/14/2014 – Lower right side back pain that is chronic. Has been hurting worse over last couple days. Pain radiated into right leg. Pt slipped & fell several days ago & now has exacerbated pain to right low back. (APA p. 117)

03/06/2014 – Pt states he's having suicidal thoughts. States he wants to jump off a bridge. Has had suicidal thoughts in the past as well. Out of meds. Went to Greenville Mental Health for intake appt. Pt is conditionally suicidal, needing pain meds & other meds til he's seen at New Horizons April 3rd. Pt on Celexa which will be changed to Zoloft, Lortab, Lidocaine patch, Neurontin, Protonix, Trazadone. No narcotics written in ER. (APA p. 120)

06/28/2014 – Ingestion – Overdose. Pt went down @ Walmart. Bystanders started CPR & witnessed seizure. Upon EMS arrival, pt stable but combative. Verbally aggressive towards staff upon discharge stating, "how can you kick me out, I'm drunk as a cooter." Pretending to be unsteady even though he was standing @ door with a steady gait. Yelling upon discharge stated that he didn't know what was wrong. (APA p. 133)

07/16/2014 – Tripped & fell & has low back pain, Right shoulder pain & low abdominal pain. "I think I gave myself a hernia." Fell while running/walking on hard surface, landing on right side. (APA p. 142)

07/26/2014 – Back/sciatica pain since June 30 due to work accident. States he hurt right shoulder & low back in fall @ work on June 30th. Was evaluated here 2 weeks later & x-rays of the shoulder were negative. Told the doctors that he hurt himself 4 days ago. "Today he is back because the workers' comp coordinator told him to go to the ER if he was still in pain. She would have a doctor for him to follow up with next week. (APA p. 148)

08/16/2014 – Pt reports ongoing back pain from old job injury. Lower back radiates to right leg. Chronic back pain. Missed Steadman Hawkins appt because mother got ill. New appt on 8/26. (APA p. 154)

08/20/2014 – Pt arrives c/o low back pain, sciatica. Pain & right shoulder pain. Had work place accident on 6/30/14 & has been having pain issues since. Has been seen here multiple times for these complaints. He was here 4 days ago for same complaint. No new issues at this time. Pt has ortho f/u in 6 days. Pt very disappointed not to receive any narcotics today. I told patient that ER was not appropriate place to get chronic pain management & he would have to follow up with PCP and ortho. Patient became threatening & aggressive. I strongly urge that no further narcotics be given to this patient in future w/o obvious painful injury, especially given prior history. (APA p. 158)

08/23/2014 – Pt c/o left foot pain that has been going on for a while. C/o right sciatica & bunions on left foot. Hurts to walk. Got hurt on the job in June & sustained back injury; c/o low back pain radiating to right leg & now left foot pain due to improper walking due to right leg pain. (APA p. 161)

10/11/2014 – Pt stating, "I am having some sciatica pain in right lower back with pain into right leg." Patient walked into triage without any difficulty. States he injured his back on the job in July & has had a flare up of back pain over past few days; states pain located to right lower back that radiates down leg. States he has been moving furniture. Pt states he injured his back in June 2014 @ work. Has seen Dr. Creek at Steadman Hawkins but did not follow up as suggested. States, "I missed my second appointment because I didn't have a ride & I have not been back and I finished all my medications." Patient requesting pain medication, but refused Ibuprofen & Toradol. States, "I don't want a shot & I have Ibuprofen at home." (APA p. 164)

In addition, medical reports from Bon Secours St. Francis Hospital were submitted.

These records are summarized as follows:

02/10/2012 – Chronic low back pain & right hand pain. C/o right lower back pain that radiates down leg. Also reports right shoulder and hand pain. Pains began in November after falling on a roof, but increased tonight. This is a recurrent problem. Current episode started more than 1 week ago. Right hand exhibits tenderness. Normal ROM. (APA p. 169)

06/15/2012 – C/o lower right back pain radiating into right leg s/p old injury. States he was in pain management but is no longer. Has taken Percocet 10 in past but has not had any for 3 months. Taken Motrin and Tylenol without relief. States he was injured at work when he fell on a roof because he slipped on ice. States he has herniated discs at L3, L4 and L5 as well as right hip, right hand and right shoulder pain. Has appt next month with an orthopedist. Rx for Cyclobenzaprine 5 mg, Oxycodone-Acetaminophen 10-325 mg, & Prednisone 10 mg. (APA p. 179)

07/14/2012 – Pt states he has hx of low back pain due to original injury in November. Was outside working yesterday in the yard & had onset of low back pain & sciatic pain during night. Rx for Cyclobenzaprine 10 mg, Oxycodone-Acetaminophen 10-325 mg. (APA p. 184)

07/27/2012 – C/o atraumatic acute chronic low back pain x 1-2 days. Pt reports work related injury associated with lifting. Rx Hydrocodone-Acetaminophen 10-500 mg, Prednisone 20 mg, Promethazine 25 mg. (APA p. 190)

10/29/2012 – C/o lower back pain radiating down right leg onset last pm. Also c/o left shoulder pain. States he was given Percocet by PCP in Georgia & moved here & is out. (APA p. 194)

05/23/2013 – Presents with right hand/wrist pain. Started more than 2 days ago. No hx of trauma (APA p. 199).

04/04/2014 – C/o lower back pain radiating down right leg. Onset 2008 after mcc. States out of pain meds x couple months, but on DHEC record it shows he filled #120 Norco 7.5 mg on 3/5/14 & has every month since last year. When I bring that up to him, he states he lost them. He has also filled numerous intermittent small narcotic meds as well from different EDs. States he normally takes Norco for pain prescribed by PCP. Attempted Tylenol w/o relief. Was told we could not give him narcotics tonight due to fact he has gotten them so many different places. (APA p. 202)

07/20/2014 – Pt states right shoulder injury approx. 1 week ago while @ work. Has been seen at GHS & referred to specialist but did not follow up as instructed. Pt c/o right shoulder pain with pain radiating down into back. Pt states he was prescribed Norco at GHS & is out. I discussed w/patient that I could not provide him with another script for Norco but could provide him w/different pain meds & advised him that he needed to be compliant with f/u for further evaluation & treatment for his right shoulder. (APA p. 208)

Based on the record of the case, the following are my

FINDINGS OF FACT

1. The South Carolina Workers' Compensation Commission has exclusive jurisdiction over this matter. The parties consented to venue in Richland County, South Carolina.
2. All parties received timely and proper notice of the date, place, time and purpose of the hearing.
3. On his Form 50, the Claimant alleges an injury by accident on July 4, 2014 arising out of and within the course and scope of his employment. During his testimony, the Claimant testified

to another accident on June 30, 2014 resulting in injuries to the identical body parts as the July 4, 2014 claim.

4. The Claimant appeared pro se at this hearing. He was advised of and waived his right to legal counsel.

5. Claimant is alleging injuries to his neck, right shoulder, back, right hand and wrist and a hernia.

6. While Claimant initially pled a chipped tooth, he withdrew this claim admitting a prior fracture to the tooth.

7. Additionally, Claimant moved to amend his Form 50 to allege a repetitive trauma injury to which the Carrier consented. There was conversation at the time of the hearing as to the repetitive trauma claim. However, Claimant does not assert a repetitive trauma as part of this claim.

8. The Claimant is seeking medical care and treatment for his neck, right shoulder, back and right hand and wrist.

9. McCall additionally asserted that he had suffered a hernia but this was not pled on his hearing request.

10. He seeks temporary total disability benefits from June 30, 2014 to the present and continuing.

11. The Defendants have asserted a general denial and that the Claimant lacks credibility.

12. Defendants also assert that the Claimant did not report his injury to the Employer until the job had ended.

13. There were no other witnesses to testify at the hearing other than the Claimant. Much of the Claimant's allegations as to the work injury rest solely on his testimony and subjective complaints.

14. As a denied claim, the burden of proof rests solely with the Claimant. The standard is a preponderance of the evidence – more likely than not.

15. The medical records in this case are voluminous as to the extensive medical issues and complaints by the Claimant prior to the alleged accidents in this case.

16. In my reading, the only medical record I found that bolsters the Claimant's assertion that his current complaints emanate from a work related accident on June 30, 2014 (even though the date pled is July 4, 2014) is the medical record found at APA page 142 which is dated July 26, 2014. That record reads in part (pt. here for back/sciatica pain since June 30 due to a work accident." That record goes on to read, "he hurt his right shoulder and low back in a fall at work on June 30." He was evaluated here two weeks later and xrays of the shoulder was negative.(He told the doctor that he hurt himself 4 days prior to arrival). "Today he is back because his Workers' Comp coordinator told him to go to the ER if he was still in pain and she would have doctor for him to follow up next week."

17. The medical record on July 16, 2014 from this same provider (GMMC Primary) reads in part, "tripped and fell and has low back pain, right shoulder pain and low abd pain I think I gave myself a hernia."

18. There is nothing in the July 16, 2014 note which mentions this being a workers' compensation injury.

19. A review of the APAs shows that Claimant is a frequent visitor to the Emergency Room and has been prescribed pain medications on multiple occasions.

20. When the evidence is viewed as a whole, I cannot conclude that the Claimant has met his burden as to a work related accident on either June 30, 2014 or July 4, 2014. A review of the evidence simply does not allow such a determination. The only references in the record are based on the self serving declarations of the Claimant. As to the medical records themselves, the record of July 26, 2014 is again based on the statements of the Claimant.

21. Given the Claimant's lengthy history of bitter complaints of pain in his low back, neck, right shoulder, right wrist and right hand, and his thirteen prior personal injury claims, the self serving declarations of the Claimant in the medical reports are not sufficient to make a finding of compensability.

22. McCall acknowledged pre-existing and prior injuries to virtually every body part he alleged on his Form 50. However, he maintained that these injuries were worse following his falls on June 30, 2014 and July 4, 2014 because he was able to work prior to the falls but was unable to work after the falls. (Transcript p. 31). The Commission's file, which is part of the record in this case contains Claimant's Work History and Wages which establish that following June 30, 2014, McCall worked ten (10) hours on July 1, 2, 3, 4, 7, 8, 9, 10, 11, and 14, and six (6) hours on July 12, 2014. This is inconsistent with his testimony at the hearing. Moreover, McCall testified that he stopped working with Hire Quest when he left Turning Point which is the entity through which he received his employment with Hire Quest. (Transcript p. 27).

23. The Claimant has not met his burden and is not entitled to any benefits under the Act as to the alleged work related accidents he testified to at the hearing.

24. The Claimant has also filed a number of motions with the Commission to reconvene the hearing and reopen the record in this case. The burden as to evidence bolstering the Claimant's case rests with the Claimant. I am not persuaded that any evidence the Claimant sought to admit

after the hearing, if it were produced, would have qualified as after discovered evidence. As such, his motion is denied.

25. Moreover, the Claimant acknowledged at the hearing he was provided with the medical records that the Employer and Carrier intended to submit at the hearing, had reviewed the records and actually used some of the records at the hearing in support of his claim. (Transcript p. 48). Claimant's assertion that he was unaware of the absence of particular medical reports from the record is refuted by his own testimony at the hearing that he was provided with the APA Submissions well in advance of the hearing. (Transcript pp. 48-49).

26. McCall's other motions assert that his SLED criminal history report was admitted in violation of Rule 609(a)(2) of the SC Rules of Evidence. Rule 609(a)(2) allows the admission of evidence "that any witness has been convicted of a crime . . . if it involved dishonesty or false statement, regardless of the punishment." Claimant's SLED report establishes convictions for conspiracy and attempt to distribute crack cocaine; two convictions for obtaining controlled substances by fraud, and giving false information to a police officer. (Defendant's Exhibit 1).

27. Defendant's Exhibit 1 was admitted at the hearing solely for the purposes of impeaching McCall's testimony that he had not been convicted of being dishonest with police officers and had not been convicted of conspiracy on narcotics charges (Transcript p. 37-38). Claimant's Motion for a Rehearing on this basis is denied.

28. This case is dismissed with prejudice.

CONCLUSIONS OF LAW

1. The SC Workers' Compensation Commission has exclusive jurisdiction over this matter pursuant to SC Code Ann. Section 42-1-540.


2. Venue in Richland County, South Carolina was consented to by the parties.
3. The Claimant bears the burden of establishing his entitlement to benefits under the Act and an award "must not be based on surmise, conjecture or speculation." Clade v. Champion Laboratories, 330 S.C. 8, 496 S.E.2d 856 (1998).
4. Rule 609 (a)(2) allows the admission into evidence "that any witness has been convicted of a crime . . .if it involved dishonesty or false statement, regardless of the punishment."
5. Regulation 67-707 grants a hearing commissioner discretion to admit additional and newly discovered evidence following the conclusion of a hearing. To prevail on this motion, Claimant must establish "the evidence was not known to the moving party at the time of the first hearing, by reasonable diligence the new evidence could not have been secured, and the discovery of the new evidence is being brought to the attention of the Commission immediately upon its discovery." In addition, the moving party must establish that admission of the evidence "would likely have produced a different result." Regulation 67-707. Claimant has failed to establish that the evidence was not known to him at the time of the hearing or that its absence from the record was unknown to him. Moreover, it is unlikely that any additional medical reports sought to be admitted by the Claimant would have produced a different decision in this case.
6. Given the inconsistencies in the Claimant's testimony, the abundance of medical records establishing his historical, bitter and consistent complaints of pain to each body part allegedly injured in this case, Claimant has failed to establish that he suffered an injury by accident arising out of the course and scope of his employment and his claim is denied with prejudice.

ORDER

NOW, THEREFORE, IT IS ORDERED that Claimant's request for benefits under the Act is hereby denied with prejudice.

Any party wishing to appeal this Decision and Order may, within fourteen (14) days of the date this Decision and Order is received, file an application for review by the Full Commission, along with the appropriate filing fee.

AND IT IS SO ORDERED!


Commissioner Gene McCaskill

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).
February 24, 2016

By: Kellie Lindler, Administrative Assistant to Commissioner McCaskill

Certificate of Service

I, Terry McCall have properly served the Party listed below with a Request for Commission Review letter from Gary M. Cannon dated 2-19-15 by placing same in U.S. Postal first class Mail service, postage prepaid, Affixed mailed to Address below:

South Carolina Workers Compensation Commission
To: Judicial Dept for Appeal
1333 Main Street, 5th Floor
P.O. Box 1715
Columbia, S.C.
29202-1715

Dated 3/8/16
mailed out from
Ridgeland Post
Mailbox

S. Terry McCall
Terry McCall 233236
R.C.I. - B.A.S.
P.O. Box 2039
Ridgeland, S.C.
29936

Witnessed by
S. Dennis Walker

3-8-16





Claimant's Name: Terry McCall SSN: 250-23-9376 Employer's Name: Hire Quest, LLC
Address: R.I. P.O. Box 2039 Address: 4560 Great Oak Drive
City: Ridgeland State: S.C. Zip: 29936 City: North Charleston State: S.C. Zip: 29418-5001
Home Phone: None In Prison Work Phone: (NO) In Prison Insurance Carrier: Ace American Ins Co.
Preparer's Name: Jerry McCall Law Firm: Pro Se Preparer's Phone #: () Incarcerated

REQUEST FOR COMMISSION REVIEW

Request for Commission Review by Claimant Employer (check one) Date of Injury or Illness: 6-30-14 @ 7-7-14
(m/d/yyyy)

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).

- 1) ^{Why did} ~~I believe~~ Commissioner Erred in refusing to grant claimant re-opening/adjournment of disability hearing; to procure "submit" further evidence of ~~his~~ disability where defense Counsel failed to obtain it and produce it due to claimant's incarceration, ^{67-613(D)} ~~and~~ defendants were not prejudiced!
 - 2) Why did Commissioner refuse to review the whole record in a whole, he did not include the ^{67-613(D)} medical record submitted without objection from ^{"Provider, Chen Lily Doctor} ~~New Horizon Medical Services~~, and the fact claimant's injuries worsened from July 4, 2014 fall, where physician wrote short note for out of work ¹¹⁻²¹⁻¹⁴ which were included as part of the record at the hearing, ^{see Attachment} nothing ever mentioned of these records. medical records supported change of condition, ^{written out of work}
- (Check one) Oral argument is is not requested. Appellant's request for oral argument is waived if not indicated on this form. ¹¹⁻²¹⁻¹⁴

Mediation
 Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.

Questions regarding mediation may be submitted to mediation@wcc.sc.gov. ^{S.C. Workers Comp Commission P.O. Box 1715, Columbia, SC 29202-1715}

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to ^{Collins & Co, Attorney at Law "Ellen Adams"} address P.O. Box 12487, Columbia, S.C. on the 7th day of March 2016, by first class postage certified mail personal service.

Preparer's Signature: Jerry McCall Title: Pro Se Email: NO-EMAIL - In Prison Date: 3-7-16

Check this box if you are not represented by an attorney

Questions about the use of this form should be directed to the Judicial Department at 803.737.5675 or appeals@wcc.sc.gov.

If the claimant appeals and is not represented by counsel, the Judicial Department will properly serve this form pursuant to Reg. 67-607 C. Pursuant to Reg. 67-205 and Reg. 701, the appeal must be postmarked no later than 14 days from the date of service of the Decision and Order of the Hearing Commissioner along with the filing fee. Attach a Form 32, if you are unable to pay the filing fee. Refer to Reg. 67-211 and Reg. 67-701 through 711.

A see Next Page →



WCC File #: 1440083
 Carrier File #: C3994793
 Carrier Code #: _____
 Employer FEIN #: _____

Claimant's Name: Terry McCall SSN: 25D-23-9376 Employer's Name: Trojanlabs/HireQuest, L.L.C
 Address: P.O. Box 2039 Address: 4560 Great Oak Drive
 City: Ridgeland State: SC Zip: 29936 City: North Charleston State: SC Zip: 29418
 Home Phone: fractured Work Phone: fractured Insurance Carrier: Ace American Insurance Co. 5001
 Preparer's Name: Terry McCall Law Firm: pro se Preparer's Phone #: fractured

REQUEST FOR COMMISSION REVIEW

Request for Commission Review by Claimant Employer (check one) Date of Injury or Illness: JUNE 30, 14 and JULY 4th, 14 (m/d/yyyy)

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).

1) Denied due Process "To Full Review of whole APA file and Additional Medical Records Not reviewed" ^{"New Horizon Family"}
 See Exhibit 1 of Claimant and Exhibit 1 of Employer APA Pgs 142-186 GHS.

See Exhibit 1 claimant New Horizon Records. How can commissioner deny ruling on the ^{Dr Chen bill} New Horizon Medical records "I'm appealing the whole record" And decision, fact findings

2) How could Claimant be denied Newly Discovered Evidence Motion, And Motion to reconvene hearing without reviewing the records first.) Denied to be heard on Medical records which were not submitted by defense counsel. Claimant was denied a fair hearing where he was handcuffed and unable to sort through documents at hearing as defense counsel where commissioner refused to allow ^{be removed} ~~restrains~~

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

Mediation
 Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.

Questions regarding mediation may be submitted to mediation@wcc.sc.gov. S.C. Workers Comp Commission P.O. Box 1715, Columbia, SC 29202-1715

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to Collins & Lee, Attorney At Law, Ellen Adams address P.O. Box 12487 Columbia, SC 29211 on the 7th day of March 2016, by first class postage certified mail personal service.

Preparer's Signature: Terry McCall Title: Pro Se Email: None - Pro Se Date: 3/7/16

Check this box if you are not represented by an attorney

Questions about the use of this form should be directed to the Judicial Department at 803.737.5675 or appeals@wcc.sc.gov.
 If the claimant appeals and is not represented by counsel, the Judicial Department will properly serve this form pursuant to Reg. 67-607 C. Pursuant to Reg. 67-205 and Reg. 701, the appeal must be postmarked no later than 14 days from the date of service of the Decision and Order of the Hearing Commissioner along with the filing fee. Attach a Form 32, if you are unable to pay the filing fee. Refer to Reg. 67-211 and Reg. 67-701 through 711.



Claimant's Name: Terry McCall SSN: 250-23 9376 Employer's Name: Trojanless / Hire Quest
 Address: P.O. Box 2039 Address: 4560 Great Oak Drive
 City: Biddeford State: S.C. Zip: 29936 City: North Charleston State: S.C. Zip: 29418-5001
 Home Phone: None Work Phone: None Insurance Carrier: Ace American Ins. Co.
 Preparer's Name: Terry McCall Law Firm: Pro Se Preparer's Phone #: Incarcerated

REQUEST FOR COMMISSION REVIEW

Request for Commission Review by Claimant Employer (check one) Date of Injury or Illness: 6-30-14 @ 7-4-14 (m/d/yyyy)

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).

Why did the Commissioner deny Claimant's benefits based on Claimant's lengthy history of bitter complaints of Pain and not read the record in full that shows and reflects All the visits in history were not all complaints of Pain, But, notice visits (dated 7-4-13 Motor Vehicle Accident) not job related, (7-29-12 MRSA visit), (5-22-13 Overdose Visit), 7-2-13 visit left without being seen), (7-17-13 visit suicidal), therefor using the 12-20-13 medical record that reads in Part "This is his 19th visit to ER with many pain related issues was not supported by substantial proof of evidence. Because the 5 visits cited above were not job related or pain related. Therefor the Claimant was grossly prejudiced by this Medical record and Carrier's statement, where the evidence to these visit were for other reasons. Therefor Claimant argues conflict in the Medical records and the language used by commissioner (Bitter Complaints) had a prejudicial effect and were Personal felt feeling used in his terminology in the Order. The full commission should review record where conflict in evidence arises. Therefor using words such as (Bitter) to establish denial based on Complaints, & history of lengthy complaints, establishes Commissioner's personal feeling therefor which should not be reflected in the Order.

(Check one) Oral argument is is not requested. Appellant's request for oral argument is waived if not indicated on this form. *This was Prejudicial Terminology Personal Feeling Not Law*

Mediation
 Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.

Questions regarding mediation may be submitted to mediation@wcc.sc.gov. *Sth Floor*
 S.C. Workers Comp Commission, P.O. Box 1715, Columbia, SC, 29202

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to Counselary Attorney, P.O. Box 6287 Columbia, S.C. 29211
 address 1333 Main Street on the _____ day of _____ 20____
 by first class postage certified mail personal service.

Terry McCall Pro Se 3-7-16
 Preparer's Signature Title Email Date

Check this box if you are not represented by an attorney

Questions about the use of this form should be directed to the Judicial Department at 803.737.5675 or appeals@wcc.sc.gov. If the claimant appeals and is not represented by counsel, the Judicial Department will properly serve this form pursuant to Reg. 67-607 C. Pursuant to Reg. 67-205 and Reg. 701, the appeal must be postmarked no later than 14 days from the date of service of the Decision and Order of the Hearing Commissioner along with the filing fee. Attach a Form 32, if you are unable to pay the filing fee. Refer to Reg. 67-211 and Reg. 67-701 through 711.



Claimant's Name: Terry McCall SSN: 250 23 9326 Employer's Name: Troyan Labor/Hire Quest
 Address: P.O. Box 2039 Address: 4560 Great Oak Drive
 City: Ridgeland State: S.C. Zip: 29936 City: North Charleston State: S.C. Zip: 294185201
 Home Phone: () NONE Work Phone: () NONE Insurance Carrier: Ace American Ins. Co.
 Preparer's Name: Terry McCall Law Firm: Prose' Preparer's Phone #: () Incorporated by Wilson

REQUEST FOR COMMISSION REVIEW

Request for Commission Review by Claimant Employer (check one) Date of Injury or Illness: 6-30-14 - 7-4-14
 (m/d/yyyy)

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).

1) Why did commissioner delete Claimants Exhibit 1 in making his ruling denying benefits/when records from ^{Provider} Doctor Chen Lili - New Horizon Medical Facility, were admitted without objection as Claimants Exhibit 2 - see Top of Pg 8 "Order"

2) Why did Commission fail to conduct a hearing when ^{see} Carrier "defense Counsel" (Transcript 34-37) entered Claimants 1988 conviction, 1990 conviction (8-1-2014 Arrest charge Breaking into Auto Tanker where fuel stored) - NON-Conviction by without first reaching a ruling by holding a hearing on the issues conducting the required balancing test to determine whether the probative value, out weighs the prejudicial effect. And why did the Commissioner allow a 8-1-2014 arrest NON-conviction be used for impeachment purposes. And fail to follow S.C.R.E 609 (a) (b) requires 14 balancing test first.
 NON-convictions are not to be used

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

Mediation
 Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.

Questions regarding mediation may be submitted to mediation@wcc.sc.gov.

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to Collins@Cory Attorney P.O. Box 12487 Columbia, SC 29211 address 1333 Main Street, 5th floor on the 20 day of 20 by first class postage certified mail personal service.

Terry McCall Prose' 3-7-16
 Preparer's Signature Title Email Date

Check this box if you are not represented by an attorney

Questions about the use of this form should be directed to the Judicial Department at 803.737.5675 or appeals@wcc.sc.gov.

If the claimant appeals and is not represented by counsel, the Judicial Department will properly serve this form pursuant to Reg. 67-607 C. Pursuant to Reg. 67-605 and Reg. 701, the appeal must be postmarked no later than 14 days from the date of service of the Decision and Order of the Hearing Commissioner along with the filing fee. Attach a Form 32, if you are unable to pay the filing fee. Refer to Reg. 67-211 and Reg. 67-701 through 711.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
Commissioner Gene McCaskill

RECEIVED

JUN 12 2017

SC Court of Appeals

Appellate Case No. 2016-001457

Terry McCall #233236 Appellant,

v.

Trojan Labor and Hire Quest, LLC Respondents.

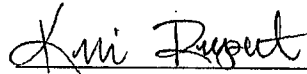
NOTICE OF APPEARANCE

Please allow this to serve as notice to the court and all parties that Kerri A. Rupert, of the law firm of Collins & Lacy, P.C., has been retained to represent Respondents Trojan Labor and Hire Quest, LLC in this appeal. Kelsey J. Brudvig will also continue as counsel for Respondents. The undersigned further requests that all copies of petitions, briefs, and/or Record on Appeal exchanged between the parties of record be served upon the undersigned at the addresses set forth herein below.

[SIGNATURE PAGE FOLLOWS]

Respectfully Submitted,

COLLINS & LACY, PC



KERRI A. RUPERT

krupert@collinsandlacy.com

KELSEY J. BRUDVIG

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1330 Lady Street, 6th Floor (29201)

Post Office Box 12487

Columbia, South Carolina 29211

(803) 256-2660 (voice)

(803) 771-4484 (facsimile)

ATTORNEYS FOR RESPONDENTS

NOTICE OF APPEARANCE

Columbia, South Carolina
January 9, 2017

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
Commissioner Gene McCaskill

RECEIVED

JUN 12 2017

SC Court of Appeals

Appellate Case No. 2016-001457

Terry McCall #233236 Appellant,

v.

Trojan Labor and Hire Quest, LLC Respondents.

CERTIFICATE OF SERVICE

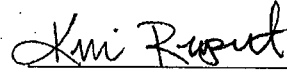
Counsel for Respondents certifies that she has served the Notice of Appearance on all parties by depositing a copy of it in the United States Mail, postage prepaid, on January 9, 2017, addressed to Appellant:

Terry McCall, #233236
Goodman Correctional Institution
G.C.I. Dorm 3-25-B BB
4556 Broad River Road
Columbia, SC 29210

[SIGNATURE PAGE FOLLOWS]

Respectfully Submitted,

COLLINS & LACY, PC



KERRI A. RUPERT

krupert@collinsandlacy.com

Post Office Box 12487

Columbia, South Carolina 29211

(803) 256-2660 (voice)

(803) 771-4484 (facsimile)

ATTORNEYS FOR RESPONDENTS

CERTIFICATE OF SERVICE-
NOTICE OF APPEARANCE

Columbia, South Carolina
January 9, 2017

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
Commissioner Gene McCaskill

RECEIVED

JUN 12 2017

SC Court of Appeals

Appellate Case No. 2016-001457

Terry McCall #233236 Appellant,

v.

Trojan Labor and Hire Quest, LLC Respondents.

CERTIFICATE OF SERVICE

Counsel for Respondents certifies that she has served her **RETURN TO MOTION FOR LEAVE** on all parties by depositing a copy of it in the United States Mail, postage prepaid, on June 12, 2017, addressed to Appellant:

Terry McCall, #233236
Goodman Correctional Institution
G.C.I. Dorm 3-25-B BB
4556 Broad River Road
Columbia, SC 29210

[SIGNATURE PAGE FOLLOWS]

Respectfully Submitted,

COLLINS & LACY, P.C.



Kelsey J. Brudvig

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Post Office Box 12487

Columbia, South Carolina 29211

(803) 256-2660 (voice)

(803) 771-4484 (facsimile)

ATTORNEYS FOR RESPONDENTS

CERTIFICATE OF SERVICE-
RETURN TO MOTION FOR
LEAVE

Columbia, South Carolina
June 12, 2017



Kelsey J. Brudvig | D: 803.255.0418 | E: kbrudvig@collinsandlacy.com

June 12, 2017

VIA HAND DELIVERY

The Honorable Jenny A. Kitchings
South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

RECEIVED

JUN 12 2017

SC Court of Appeals

Re: *McCall v. Hire Quest, LLC*
Civil Action No.
C&L File No. 001840-00804

Dear Ms. Kitchings:

Enclosed please find the original and seven (7) copies of Respondent's Return to Appellant's Motion for Leave in the above-referenced matter. Please clock the motion and return a copy to us via our courier.

By copy of this letter to Appellant, we are serving the same on him.

Respectfully,

A handwritten signature in cursive script that reads "Kelsey Brudvig".

Kelsey J. Brudvig

KJB/mmm

Enclosures

cc: Terry Edward McCall, #233236



1330 Lady Street, Sixth Floor (29201) Post Office Box 12487 | Columbia, SC 29211

VIA HAND DELIVERY

The Honorable Jenny A. Kitchings
South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

1840-804