

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM South Carolina
Workers Compensation Commission

Full Commission Order dated April 28, 2017 affirming Commissioner Melody L. James orders dated January 04, 2013 and September 30, 2013

Case No.: 2017-001217

John C. McDaniel.....Appellant,

v.

Snelling Staffing Services and United Wisconsin Insurance
Company c/o United HeartlandRespondents.

**RETURN TO RESPONDENTS MOTION TO STRIKE
PORTIONS OF APPELLANTS DESIGNATION OF MATTER**

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AUG 10 2017

SC Court of Appeals

The Appellant asks that the court deny the Respondent's Motion to Strike Appellant's Designation of Matter on the following grounds.

- 1) The Respondent's Motion should be denied under the doctrine of *res judicata*.

This is the second appeal to the Court of Appeals in this Worker's Compensation matter. During the first appeal, the respondents filed multiple motions to strike appellant's brief and designation of matter. (Respondent's motion to strike dated May 23, 2014, exhibit "A") In response to this motion the court ordered on July 3, 2014 that the motion will be granted in part, "appellant shall file an amended designation of matter, which does not include any personal recordings." (Exhibit "B") this attempt by the respondents to relitigate a formally adjudicated outcome is abusive to the appellant. These issues were brought before the court and the court denied the respondent's motion in relation to all seven issues raised in the respondent's current motion to strike.

As to current issue number 21, which contains in its entirety item 5, this issue was formerly issue number 3 in the attached motion.

As to current issue number 10, this issue was formerly issue 12.

As to current issue number 11, this issue was formerly issue 13.

As to current issue number 30, this issue was formerly issue 16.

As to current issues numbered 19 and 31, respectively, this issue was formerly issue 17.

In all of the above instances, and in relation to all of the issues, the court denied the respondent's motion to strike those portions of the appellant's designation of matter. The court should necessarily stand by its former decision to promote stability in the judiciary and to effectuate a just outcome of the current motion.

2) The Respondent's Motion should be denied under § 1-23-380 (4).

The respondents cite SC Code Ann. § 1-23-380 as justification to move this court to strike portions of the appellant's designation of matter. At a minimum, 10 of the appellant's 19 issues on appeal could be considered alleged irregularities in procedure before the Worker's Compensation commission. § 1-23-180 (4) specifically allows for the appellant to offer proof other than what is shown in the record to seek a remand to the commission.

§ 1-23-380 (4) "(4) The review must be conducted by the court and must be confined to the record. **In cases of alleged irregularities in procedure before the agency**, not shown in the record, and established by proof satisfactory to the court, the case may be remanded to the agency for action as the court considers appropriate."

The appellant's issues on appeal contain many references to alleged irregularities in procedure before the Worker's Compensation commission, and for that reason inclusion of all of the documents listed in the appellant's designation of matter are compliant with the Administrative Procedures Act. Specifically, § 1-23-380 (4).

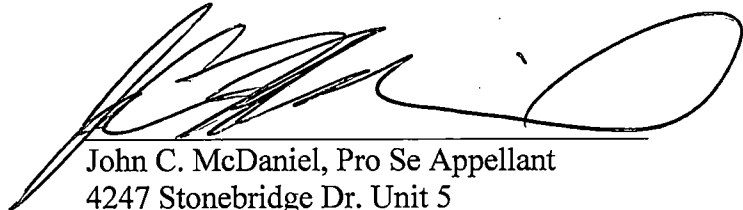
3) The Respondent's Motion should be denied under Rule 210 (c), SCACR.

The respondents cite Rule 210 (c), SCACR as justification to move this court to strike portions of the appellant's designation of matter. "... The Record shall not, however, include matter which was **not presented to** the lower court or tribunal..." The respondent's interpretation of rule 210 would inconsistently limit the ability of an appellant to enter sufficient evidence into the record to allow for substantial judicial review. The clear and every day meaning of the rule must be considered before any other statutory construction considerations. It is clear to the appellant that although the commission may not have specifically considered the records provided to them and may have even excluded them from the record that does not prohibit the appellant from presenting that evidence to the

appeals court. The prohibition of matter from the record on appeal is only that which was, "not presented to the lower court or tribunal."

In this case every item that the respondents would have stricken from the designation of matter and the record on appeal was presented to the lower court. As such, the court should deny the respondent's motion.

In conclusion, the respondent's motion should be denied under the doctrine of res judicata. If not, the court should deny the motion on the grounds that the appellant's issues contain alleged procedural irregularities and that the appellant's brief and designation of matter are compliant with rules 209 and 210, SCACR.

A handwritten signature in black ink, appearing to read "John C. McDaniel", written over a horizontal line.

John C. McDaniel, Pro Se Appellant
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Aug. 8, 2017

Exhibit A

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

12275

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

W.C.C. File No. 1116275

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

v.

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

**MOTION TO STRIKE AND/OR AMEND
PORTIONS OF APPELLANT'S
INITIAL BRIEF AND
DESIGNATION OF MATTER**

Pursuant to Rules 208, 209, 210 and 240, SCACR, Respondents Career Employment Professional d/b/a Snelling Staffing and United Wisconsin Insurance Co. move this Court to strike and/or order Appellant to revise certain portions of his Initial Brief, and to strike and/or order Appellant to revise or clarify or provide Respondents with copies of certain items listed in his Designation of Matter to be Included on Appeal ("Designation"). Appellant has designated and substantively relied on materials and evidence in his Initial Brief that are not part of the record below and which must be stricken. In addition, Appellant has designated and cited to numerous other items that are undated or otherwise unclear. Furthermore, Appellant has designated items that Respondents do not have in their files. Finally, Appellant's Initial Brief

contains cites to materials and evidence that are not designated to be part of the Record on Appeal (“Record”).

According to Rule 209(a), SCACR, the designation of matter “shall set forth with specificity those parts of the transcript, pleadings, orders, exhibits, or other materials which [a party] proposes to include in the record on appeal.” In addition, Rule 209(b), SCACR, provides that “[t]he Designation must clearly identify what the party desires to have included in the Record on Appeal, and the Designation may only propose to include portions of the transcript, pleadings; orders, exhibits, or other materials which may be properly included in the Record on Appeal [See Rule 210(c)]. A party shall not include any matter in his Designation which is not relevant to the appeal.” Rule 210(c), SCACR, in turn, provides that “[t]he Record shall not ... include matter which was not presented to the lower court or tribunal.” Rule 208(b)(4) provides, in pertinent part, that an initial brief “shall contain references to the transcript, pleadings orders, exhibits, or other materials which may be properly included in the Record on Appeal ...”

It is well-established that appellate review of a Commission decision is confined to the record before the Commission. S.C. Code Ann. § 1-23-380(4); *see also Terry v. South Carolina Dept. of Health & Env’l Control*, 377 S.C. 569, 574, 660 S.E.2d 291, 294 (Ct. App. 2008) (appellate review of agency decisions “is confined to the record ...”). “This Court’s review is restricted to the evidence considered by the appellate panel in reaching its decision,” and may not rely on evidence not considered by the Commission. *Martin v. Rapid Plumbing*, 369 S.C. 278, 288, 631 S.E.2d 547, 553 (Ct. App. 2006).

First, Appellant has designated several items that were not part of the record before the Commission and, therefore, may not be included in the Record before this Court. These include:

1. “Recorded Conversation with Virginia Crocker regarding bifurcation and remand hearing”;

2. "Recorded Conversation with SC Workers Compensation Judicial Dept. & Keith Roberts regarding Remand Order";
3. "Email with Attachments submitting Amended Form 30 with Index of Exhibits & Exhibits (A-K)"

Items (1) and (2) are not official transcripts of proceedings before the Commission but, instead, purport to be Appellant's personal recordings of telephone conversations with the Judicial Director and Staff Attorney of the Commission. (See Initial Brief of Appellant, indicating "ROA___ (Emails & Tape Recordings)," Att. A, pp. 7, 30). A personally-recorded phone conversation is in no way part of the Commission's record in this matter and must be stricken from both Appellant's Initial Brief and Designation. To the extent Appellant intends to designate email correspondence with the Commission, at a minimum, he needs to indicate the dates of those emails so that Respondents can identify exactly what emails he is referencing.

Item (3) and the accompanying attachments were not considered by the Commission. (See Appellate Panel Decision and Order, dated December 19, 2013, Att. B, p. 6) ("the Appellant Panel did not consider any documents outside the record because the Claimant's Amended Form 30 was not timely served; therefore, any records submitted with the Amended Form 30 were not considered by the Panel"). Alternatively, to the extent that Appellant claims his Amended Form 30, emailed to the Commission on October 12, 2013, (Att. C), appealed rulings contained in the January 4, 2013 Single Commissioner Decision, it is clearly untimely pursuant to S.C. Code Ann. § 42-17-50 and S.C. Code Reg. § 67-701(A), which require that appeals to the Full Commission be filed within fourteen days of notice of a Commission order. Appellant's Amended Form 30 was filed more than eight months after the deadline to appeal the January 4, 2013 Single Commissioner Decision had run. Furthermore, to the extent Appellant is alleging his Amended Form 30 appealed rulings in the September 30, 2013 Single Commissioner

Decision, it is ineffectual because it was not accompanied by the appropriate filing fee. *See* S.C. Code Ann. § 42-17-50 (“Each application for commission review must be accompanied by a fee equal to that charged in circuit court for filing a summons and complaint in order to defray the costs of the review”); S.C. Code Reg. § 67-702(A) (“The appellant shall attach to the Form 30 the filing fee required by the Act”).¹ Because the items listed herein as (1)-(3) were not before the Commission, they may not be included in the Record and must be stricken from Appellant’s Designation. Furthermore, Appellant’s Initial Brief must be revised to delete any references to or arguments based on these non-record materials.

Second, many of Appellant’s designations fail to meet the level of specificity called for in Rule 209(a) & (b). He has failed to provide dates for various pleadings or communications that he wishes to have included in the Record on Appeal. Respondents have attempted to discern the dates of the following documents Appellant has designated:

4. “Form 58 Claimant’s Brief and APAs submitted” (*possibly dated October 31, 2012*);
5. “Form 58 Defendant’s [sic] Brief and APAs submitted” (*possibly dated November 5, 2012*);
6. “Emails regarding objection to Request for Full Commission Order & Proposed Finding of Fact w/ Attachment” (*possibly dated December 16, 2013*);
7. “Email with Attachments submitting Amended Form 30 with Index of Exhibits & Exhibits (A-K)” (*possibly dated October 14, 2013*);
8. “Claimant’s Full Commission Hearing Brief” (*possibly dated March 26, 2013*);
9. “Defendant’s [sic] Full Commission Response Brief” (*possibly dated April 10, 2013*);
10. “Claimant’s Full Commission Reply to Response Brief” (*possibly dated May 15, 2013*);

¹ Although S.C. Code Reg. § 67-702(B) allows a party to file a Form 32, Request to Waive Appeal Filing Fee, with a Form 30, Appellant did not do so here. Although Appellant requested a waiver from filing fees for some of the motions he filed with the Commission, that request was denied, (Att. D), and he did not file a Form 32 with his Amended Form 30.

11. "Letter submitting records of Jarred Lampkin and APAs" (*possibly dated May 17, 2013*);
12. "Motion for Additional Evidence to Complete the Record with Attachments (APAs 11-23)" (*possibly dated May 6, 2013*);
13. Motion for Additional Evidence and Deposition Testimony and Exhibits (Deposition Testimony of John C. McDaniel)" (*possibly dated May 10, 2013*);
14. "Motion for Penalties filed July 1, 2013 with Exhibits" (*we have one dated June 11, 2013 and filed June 14, 2103, please confirm if this is what is intended*); and
15. "Motion to Quash Subpoenas" (*possibly dated July 2, 2013*);

Respondents request that Appellant be ordered to confirm whether the documents and communications listed above as items (4)-(15), undated in Appellant's Designation, are the items he intends to designate and, if not, confirm the correct date(s) of the documents he has designated.

Third, there are items listed on Appellant's Designation that Respondents do not have in their files, including:

16. "Letter submitting Affidavits to SC Workers Compensation Commission dated October 7, 2103"; and
17. "Letter dated October 4, 2013 submitting additional medical records to include Dr. Tavel's MMI dated 7/22/2013."

Respondents request that Appellant provide them with a copy of the correspondence listed herein as items (16)-(17).

Fourth, Appellant's Initial Brief contains cryptic cites to the Commission record in violation of Rule 208(b)(4), SCACR. Specifically:

18. On page 12, of his Initial Brief, Appellant cites to "(ROA _____)." It is unclear to what portion of the Record he is referring.

19. On page 13 of his Initial Brief, Appellant cites to “(ROA____ (Exhibit to Motion bate #127).” It is unclear to what Motion he is referring² and what the “bate #” reference indicates.
20. On page 13 of his Initial Brief, Appellant cites to (ROA _____ Exhibit to Motion bate #166-195).” It is unclear to what Motion he is referring³ and what the “bate #” reference indicates.
21. On page 18 of his Initial Brief, Appellant cites to “(ROA____APA p.340-351)”; however, there are no APA submissions admitted before the Single Commissioner or the Full Commission with page numbers in this range. Claimant submitted APAs on October 31, 2012, with pages numbered 1-119, which were supplemented on November 15, 2012, with evidence numbered pages 120-122. Respondents submitted their APAs on November 5, 2012 including a total of 14 pages of evidence. (Att. E (Pre-Hearing Briefs and indexes to APA submissions)). Beyond the pay records of Jarred Lampkin, no additional APA submissions or evidence were accepted into the record by the Commission.
22. On page 24, of his Initial Brief, Appellant cites to “(ROA)_____(APA)).” It is entirely unclear what pages in the APAs his reference indicates.

Respondents request that Appellant be ordered to revise his Initial Brief to clarify what portions of the record before the Commission is intended in items (18)-(22).

Fifth, Appellant’s Initial Brief cites to the Record for a number of items that are not included in his Designation. For example, on page 7 of Appellant’s Initial Brief, he cites to “(ROA__(Form 50))”; however, he has not designated any Form 50 to be included in the Record. There are numerous such citations in Appellant’s Initial Brief to items that are not designated. Respondents request that Appellant be ordered either to designate with sufficient detail those items to be included in the Record or to remove those references to the Record from Appellant’s Initial Brief.

Sixth, Appellant’s Initial Brief contains cites to materials that were neither contained in his Designation nor admitted before the Commission. Specifically:

² Appellant filed multiple motions with the Commission.

³ See footnote 2, *supra*.

23. On page 24, of his Initial Brief, Appellant cites to "(ROA ___ RCC report dated 2/27/12)"; however, no such report is contained in the APAs admitted into the record before the Commission.

Respondents request that Appellant be ordered to revise his Initial Brief to delete all references to and any arguments dependent on the non-record materials in item (23) above.

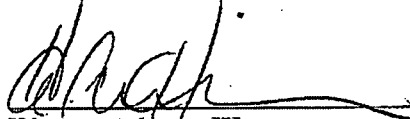
Finally, Respondents request that the briefing schedule, including the deadline for filing their Initial Brief and Designation of Matter, be stayed until the Court decides this Motion. In addition, Respondents note that Appellant did not serve his Initial Brief and Designation of Matter on appellate counsel, (Att. A), who noticed their appearance in this matter on January 31, 2014. Respondents request that the Court order Appellant to serve all pleadings and correspondence concerning this appeal with undersigned appellate counsel.

CONCLUSION

For the reasons stated herein, Respondents move this Court to strike all non-record material from Appellant's Designation and Initial Brief, and to order Appellant to clarify his Designation regarding items that are insufficiently identified therein. In addition, Respondents request this Court to order Appellant to revise his Initial Brief and/or Designation so that all record material he intends to cite to in his Initial Brief is properly designated for the appellate Record in this case. Respondents also request that this Court order Appellant to provide Respondents with certain materials that he has designated that are not contained in our files. Finally, Respondents request that the briefing schedule be stayed while the Court considers this Motion and that Appellant be directed to serve all pleadings and correspondence concerning this appeal on the undersigned.

May 20, 2014

McANGUS GOUDELOCK & COURIE, L.L.C.



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Exhibit B

The South Carolina 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

ORDER

Respondents have filed a motion to strike and/or require Appellant to amend his initial brief and designation of matter. After careful consideration, Respondents' motion is granted in part and Appellant's brief and designation of matter are stricken. Within fifteen days of this order, Appellant shall file an amended designation of matter, which does not include any personal recordings. Furthermore, within fifteen days of this order, Appellant shall file an amended initial brief, which contains intelligible references to the materials cited in the designation of matter pursuant to Rule 208(b)(4), SCACR.


FOR THE COURT

Columbia, South Carolina

cc:
John McDaniel
R. Mark Davis, Esquire

FILED

July 3, 2014

Allison Cauthen Nussbaum, Esquire
Weston Adams, III, Esquire
Helen Faith Hiser, Esquire

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM South Carolina
Workers Compensation Commission

Full Commission Order Dated April 28, 2017 Affirming Commissioner Melody L. James orders dated January 04, 2013 And September 30, 2013

WCC File:1116275
Case No.: 2017-001217

John C. McDaniel.....Appellant,

v.

Snelling Staffing Services and United Wisconsin Insurance
Company c/o United HeartlandRespondents.

PROOF OF SERVICE

I certify that I have served “return to respondents motion to strike portions of designation of matter” by depositing a copy in the U.S. Mail, postage paid on Aug. 8, 2017 addressed to the below:

Helen F. Hiser
R. Mark Davis
Allison Nussbaum
McAngus Goudelock & Courie, LLC
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Jenny Abbott Kitchings
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SC Court of Appeals


John C. McDaniel

Aug. 8, 2017

John C. McDaniel

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August 8, 2017

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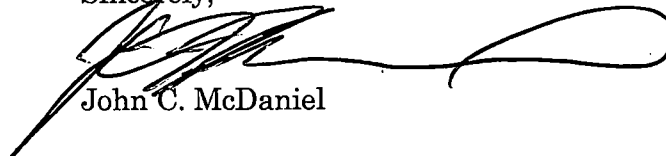
RE: John C. McDaniel v. Career Employment Professional d/b/a Snelling Staffing
DOI: 11/21/2011
WCC File: 1116275
Appellant Case No: 2017-0001217

Dear Ms. Kitchings,

Enclosed please find the Appellant's Return to Motion to Strike Designation of Matter and Proof of Service of same for the above referenced case.

Thank you in advance for your assistance on this matter.

Sincerely,



John C. McDaniel

CC: Helen Hiser
Allison Nussbaum
R. Mark Davis

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SC Court of Appeals

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