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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from the South Carolina
Workers Compensation Commission
SCWCC File No. 1503413

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SC Court of Appeals

James Thorpe, Employee, Claimant, Respondent,

vs.

Town of Bowman, Employer, and State Accident Fund, Carrier, Appellants.

Appellate Case No. 2017-001408

INITIAL REPLY BRIEF OF APPELLANTS

Clarke W. McCants, III
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Reply Argument

1.THE COMMISSION ERRED IN FINDING AS A FACT AND IN CONCLUDING
AS A MATTER OF LAW THAT THE RESPONDENT SUSTAINED AN INJURY
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EMPLOYMENT 1

Conclusion2

REPLY ARGUMENT

I. THE COMMISSION ERRED IN FINDING AS A FACT AND IN CONCLUDING AS A MATTER OF LAW THAT THE RESPONDENT SUSTAINED AN INJURY BY ACCIDENT ARISING OUT OF AND IN THE COURSE OF HIS EMPLOYMENT.

In his brief for this matter the Respondent argues, in essence, that the totality of the circumstances in this case justifies upholding the decision of the Appellate Panel of the Commission. If the Court accepts the Respondent's arguments in this case, then anytime and anywhere Racks might have bitten him would be deemed a work-related injury.

As set forth in the Appellants' Initial Brief there is no dispute that the incident which forms the basis for this case took place at the Respondent's home on a day when he was not working as a police officer for the Town of Bowman. (Transcript of hearing held before Commissioner James on 2/3/16, P. 6, L. 14 to P. 62, L.13). There is also no dispute that Racks was the sole and personal property of the Respondent.

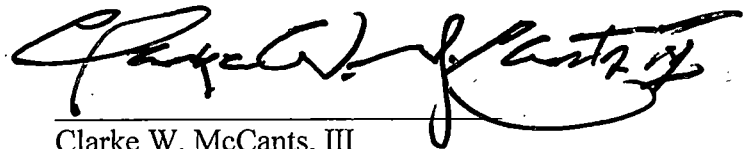
There is no factual basis to support a legal conclusion that the specific injury in this case, a dog bite, has a direct connection with the Respondent's work activities with the Town of Bowman. The Single Commissioner in this case correctly found that the Respondent had finished any work or training he had undertaken with Racks on the morning in question, and at the time the bit occurred. (Decision and Order dated 11/21/16, Findings of Fact Nos. 21, 22, 23 and 24).

In an attempt to establish such a connection the Respondent states that "While Racks was in the back corner of the Claimant's yard retrieving the rubber hose, the Claimant went out the backyard to his vehicle to retrieve the bag of food that he had been given by the Chief". (Respondent's Initial Brief, Page 5). This statement is not supported by the evidence in this case.

A close reading of the Respondent's testimony at the hearing before the Single Commissioner shows that Racks was simply present in the Respondent's backyard, the Respondent left the backyard and Racks then escaped. (Transcript of hearing held before Commissioner James on 2/3/16, P. 23, L. 8 to L. 24). It makes no sense that the Respondent would have departed the backyard while Racks was in the process of retrieving the rubber hose, or otherwise still working with or training him. In plain terms, Racks ran away when the Respondent left the area of the backyard. (Transcript of hearing held before Commissioner James on 2/3/16, P. 49, L. 8 to L. 15). Thus, the need to give chase and catch Racks, and the resulting bite injury, have no relationship to the Respondent's work with the Town of Bowman.

CONCLUSION

For the reasons stated above, and in their Initial Brief for this matter, the Appellants respectfully submit that the Appellate Panel Decision and Order of the South Carolina Workers' Compensation Commission dated May 23, 2017 should be reversed and this matter should be dismissed.



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October 2, 2017

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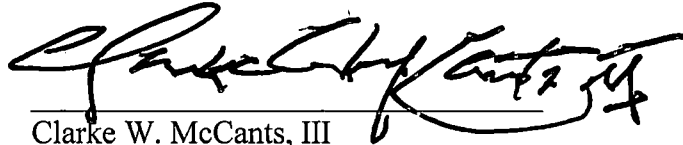
Town of Bowman, Employer, and State Accident Fund, Carrier, Appellants.

Appellate Case No. 2017-001408

PROOF OF SERVICE

I certify that I have served a copy of the Appellant's Initial Reply Brief on counsel for the Respondent, R. Michael Johnson, by depositing a copy of it in the United States Mail, postage prepaid, on October 2, 2017 addressed to R. Michael Johnson, Michael Johnson & Associates, 1201 Carolina Place, Suite 103, Fort Mill, SC 29708

October 2, 2017



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October 2, 2017

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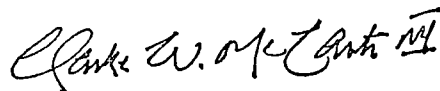
IN RE: James Thorpe, Jr. v Town of Bowman
SCWCC File No. 1503413
Claim No. 2015-1120
Date of Alleged Injury: 2/27/15
Our File No. MWC15-1349

Dear Ms. Kitchings:

Please file in the above-referenced matter the Initial Reply Brief of Appellants and Proof of Service thereof upon opposing counsel. By copy of this letter, I am serving opposing counsel with a copy of the Initial Reply Brief.

With best regards, I remain

Very truly yours,



Clark W. McCants, III

/epe

Enclosures

cc: R. Michael Johnson (w/ enc)

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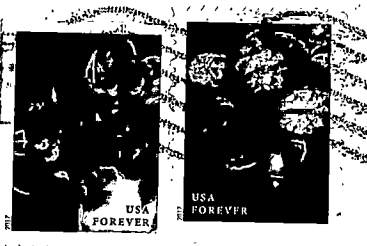
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