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THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA  
WORKERS' COMPENSATION COMMISSION

Trial Court Case No. 1501382

RECEIVED  
OCT 16 2017  
SC Court of Appeals

EDMUND DILLON, Employee, ..... Appellant,

v.

FLEET PRIDE, Employer, and  
Gallagher Bassett as TPA for  
American Zurich Insurance Co., Carrier, ..... Respondents.

NOTICE OF APPEAL

Appellant Edmund Dillon appeals the Decision and Order of the Hearing Commissioner filed February 2, 2016 and the Decision and Order of the South Carolina Workers' Compensation Commission Appellate Panel filed on September 18, 2017. Appellant received notice of entry of the Appellate Panel Order via electronic mail only on September 18, 2017. Appellant did not receive notice or a copy of the Order pursuant to SC Code §42-17-60 and/or §1-23-350.

Pursuant to SC Code §42-17-60, the grounds of the appeal and/or the errors of law presented to the Court are set out hereinafter:

1. That where pursuant to S.C. Code of Laws §42-17-40, the Claimant requested a review of all of the Findings of Fact, the Conclusions of Law, the Order and Award and of all rulings and decisions made by the Commissioner at the hearing, as contained in the Record or as made at any unrecorded pre-hearing conference, and in any communications concerning the claim, Order, Award and Decision rendered by the Hearing Commissioner in this matter, the Commission erred by not reversing the decision and awarding benefits.

2. That the Commission erred as a matter of law by trying to distinguish this case from the cases of Nicholson v. SCDSS, 411 S.C. 391, 769 S.E.2d 1 (2015); Barnes v. Chapter 1 Realty, 411 S.C. 391, 768 S.E.2d 651 (2015); and Thomas v. Five Star Transportation, 412 S.C. 1, 770 S.E.2d 183 (SC App. 2015) and by applying an idiopathic fall case which this is not, that being the case of Bagwell v. Ernest Burwell, Inc., 227 S.C. 444, 88 S.E.2d 611 (1955).

3. That the Commission erred as a matter of law by making Conclusion of Law #1 wherein the substantial evidence in the Record clearly establishes by a preponderance of the evidence that the Claimant sustained compensable injury by accident as defined under SC Law.

4. That the Commission erred as a matter of law in making Conclusion of Law #4 by finding that the Claimant did not establish as a matter of law that the Claimant had sustained compensable injury under §42-1-160 as defined by our Appellate Courts.

5. That the Commission erred as a matter of law by making Conclusion of Law #5 wherein the evidence established by a preponderance of the evidence that the claimant sustained a compensable injury by accident resulting in his death and by basing that conclusion of law on Findings of Fact #16-21.

6. That the Commission erred as a matter of law in making Conclusion of Law #6 by finding that the Claimant sustained an idiopathic fall due to a pre-existing unrelated medical issue as described in the medical records and through witness testimony and basing that Conclusion of Law on and as set forth in Findings of Fact #28-30.

7. That the Commission erred as a matter of law by making Conclusion of Law #7 wherein the Commission affirmed the finding that the Claimant failed to meet his burden of proof and dismissed the claim with prejudice basing that Conclusion of Law on Finding of Fact #32.

8. That the Commission erred as a matter of law in the Award portion by denying the Claimant benefits and dismissing the Claimant's case with prejudice.

9. That the Commission erred as a matter of fact and law in making of Findings of Fact #17-23 wherein all of these Findings of Fact concerned and are based on the testimony of Josiah Fludd and further and specifically in that these Findings of Fact make the testimony of Josiah Fludd's testimony conclusive one way or another as to the, "cause" of the fall. Further, the Commission's Findings are based on surmise, speculation and innuendo based on the actual testimony from Mr. Fludd.

10. That the Commission erred as a matter of fact and law by making contradictory Findings of Fact. The Commission made, on the one hand, a Finding that Mr. Fludd could not testify as to whether or not the Claimant slipped, and on the other hand made the Finding under Finding of Fact #8 that on the day of his fall the Claimant reported that he slipped and fell. The Commission then affirmed and made Finding of Fact #24 finding that the Commission was not persuaded that the Claimant slipped or tripped and by finding under Finding of Fact #25 that the Claimant simply collapsed.

11. That the Commission erred as a matter of law by failing to apply the evidentiary concepts of present sense impression, excited utterance, then existing physical condition, and statement made for medical treatment, in reference to the statements that were made by the Claimant (deceased) immediately following the accident and as part of medical treatment following the accident. All of those concepts require the fact-finder to give great weight to those statements because the law gives those statements great credibility due to their immediacy and relationship to the event and the condition of the Claimant at the time that they were made.

12. That the Commission erred as a matter of law in making Finding of Fact #23 where this Finding specifically establishes that this Finding by the Commission is the subject of being arbitrary, capricious and an abuse of discretion. The Finding that the deposition testimony (10/15/15) of Mr. Fludd as a witness under oath is entitled to greater weight because, "he does not stand to gain or lose based on his testimony in this case", does not constitute a lawful basis for assigning greater weight to his deposition testimony (10/15/15) especially as compared to the uncontradicted evidence from the EMS workers and doctors in reference to their findings and the statements they recorded as having been made to them by the deceased worker in

this matter within thirty (30) minutes of his slip and fall on February 23, 2015, which was eight (8) months before the deposition of Mr. Fludd.

13. That the Commission erred as a matter of fact and law by basing its entire factual decision as to whether or not the Claimant sustained injury by accident upon the factual testimony of Mr. Josiah Fludd given in his discovery deposition eight (8) months after the accident wherein that testimony and evidence does not support the conclusions made from a factual standpoint by the Commission.

14. That the Commission erred as a matter of fact and law by making Finding of Fact #25 which is arbitrary and capricious as defined by this Court and the Supreme Court wherein the Hearing Commissioner gave undue weight to possible reasons for a collapse or fall as related by the medical evidence of the employer's expert witness and giving little or no weight to the evidence from the Claimant himself and the Claimant's expert medical witness who opined that preexisting conditions did not contribute to or cause the fall.

15. That the Commission erred as a matter of law in making Finding of Fact #28 wherein the Commission erred in placing an improper burden of proof on the Claimant in that the undisputed testimony of the Claimant to his medical providers at the time of the injury was that he slipped and fell. The evidence of Mr. Fludd and, in particular, in his deposition given eight (8) months after that accident, reveals that Mr. Fludd was loading a truck at the time, protecting his paperwork from the rain, his view was obscured, his primary focus was not on the Claimant until the Claimant began to fall, and all he really knows is that the Claimant fell, not why or how. The Hearing Commissioner placed too great of a weight on what Mr. Fludd did not see as opposed to what he did see. Does this evidence constitute, "substantial" evidence on the essential issue before the Commission for decision - did the evidence establish by a preponderance of the evidence injury by accident as defined in S.C.; i.e. the unexpected result from the work activity.

16. That the Commission erred as a matter of law by sustaining the ruling of the Hearing Commissioner excluding the evidence from the legal nurse expert presented by the Claimant. The nurse was qualified and the evidence should have been admitted.

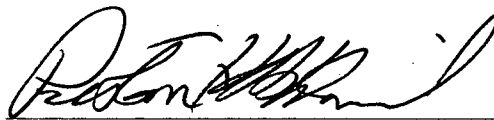
17. That the Commission erred as a matter of law by failing to make findings of facts and rulings of law based on a review of all of the expert testimony presented by the claimant wherein there is absolutely no Finding of Facts in the order showing a review of that testimony as part of the consideration of the

Hearing Commissioner which thus makes the decision arbitrary and capricious and not made in accordance with the fact-finding responsibility of the Commission.

18. That the Claimant specifically subpoenaed "any and all investigative reports, files, statements, or other materials concerning this claim, including but not limited to, any insurance investigation" and where none was produced, the Commission erred by giving any weight to the deposition testimony of Josiah Fludd.

19. That the Commission erred as a matter of law by considering the testimonial evidence of Josiah Fludd, in his deposition, testimony and his answers given, were based on and in reply to leading questions which questions were objected to specifically by counsel for the claimant during the deposition as being leading. That testimonial evidence served as the side bases for the Commission and was highly prejudicial to the Claimant. The testimony in essence was the testimony of defense counsel not that of Mr. Fludd.

Respectfully submitted,



By Preston F. McDaniel, Esquire  
MCDANIEL LAW FIRM  
1315 Elmwood Avenue  
Columbia, South Carolina 29201  
(803) 771-7211

And

Brian Dumas, Esquire  
718 Clemson Road  
Columbia, South Carolina 29229  
(803) 669-4996  
Attorneys for Claimant/Appellant

October 12, 2017

Other Counsel of Record:  
Cynthia C. Dooley, Attorney

Attorney for Respondents

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**PROOF OF SERVICE**

I certify that I have served the **NOTICE OF APPEAL** by depositing a copy of it in the United States Mail, postage prepaid, on October 12, 2017 addressed to: Ms. Amy Bracy, Judicial Director, South Carolina Workers' Compensation Commission, Post Office Box 1715, Columbia, South Carolina 29202 **AND** also serving a copy upon Cynthia C. Dooley, Attorney, Turner Padgett, Post Office Box 1473, Columbia, SC 29201.

Dated: October 12, 2017



Preston F. McDaniel  
MCDANIEL LAW FIRM  
1315 Elmwood Avenue  
Columbia, South Carolina 29201  
(803) 771-7211

Attorney for Appellant

**McDANIEL LAW FIRM**  
ATTORNEYS AND COUNSELORS AT LAW  
1315 ELMWOOD AVENUE  
COLUMBIA, SOUTH CAROLINA 29201

Proudly representing injured workers  
for over 30 years.

Preston F. McDaniel

Telephone (803) 771-7211

Matthew Robertson

**RECEIVED** Facsimile (803) 252-0709

October 12, 2017

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SC Court of Appeals

Honorable Jenny Abbott Kitchings  
Clerk of Court  
SC Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

**RE: Edmund Dillon, Appellant, v. Fleet Pride, Employer,  
and Gallagher Bassett as American Zurich Insurance  
Co., Carrier, Respondents.  
Trial Court Case No. 1501382**

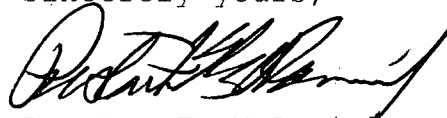
Dear Ms. Kitchings:

Enclosed for filing is the original and one (1) copy of a Notice of Appeal in the above-referenced matter. Also, enclosed are the following:

1. Proof of Service of the Notice of Appeal on the Respondents;
2. A copy of the Orders which are to be challenged on appeal; and
3. The filing fee in the amount of \$100.00.

Please file the original documents and return the clocked-in copy to me via the enclosed self-addressed, stamped envelope. By copy of this letter, I am serving Counsel of Record and the SC Workers' Compensation Commission with the above-referenced Proof of Service and Notice of Appeal.

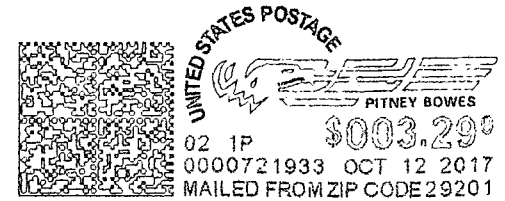
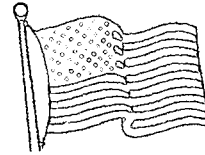
Sincerely yours,



Preston F. McDaniel

PFM/abh/smk/abh  
Enclosures

cc: Cindy Dooley  
Ms. Amy Bracy, SC Workers' Compensation Commission  
Brian Dumas, Esquire - Co-Counsel for Appellant



McDaniel Law Firm  
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**SC Court of Appeals**

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