

South Carolina Appellate Case Management System

CLERK'S OFFICE
SUPREME COURT
COURT OF APPEALS

C-Track, the browser based CMS for Appellate Courts

Appellate Case No. ...

Disclaimer: The information and documents available here should not be relied upon as an official record of action.
Only filed documents can be viewed. Some documents received in a case may not be available for viewing.
Some documents originating from a lower court, including records and appendices, may not be available for viewing.

Case Information: 2016-002443			
Court:	Court of Appeals	Classification:	Appeal - Workers' Comp. Commission - Workers' Comp. Commission
Short Title:	Reginald Evans v. Exel, Inc. View Full Title	Case Status:	Rehearing Denied
Consolidated:			
Filed Date:	12/05/2016	Oral Argument Date:	
Disposition Date:	05/19/2017	Disposition Type:	Order
Remittitur Date:			
Lower Court or Tribunal:	1502120		

- Party Information			
Appellate Role	Party Name	Former	Attorney(s)
Appellant	Reginald Evans	N	Self Represented
Respondent	Exel, Inc.	N	Amanda Anderson Mellard Helen F Hiser
Respondent	New Hampshire Insurance Company	N	Amanda Anderson Mellard Helen F Hiser

Views

Display:

Filed Date	Event Information	Doc
10/06/2017	Rehearing - Denied	
08/28/2017	Motion - Return	
08/15/2017	Non-Dispositional Decision - Order	
08/14/2017	Motion - Dismiss	
08/07/2017	Record - Record on Appeal Filed	
08/07/2017	Record - Proof of Service of Record on Appeal	
07/19/2017	Non-Dispositional Decision - Order (motion to reinstate- pending record on appeal)	
06/19/2017	Motion - No Reply	
06/12/2017	Motion - Return	
06/01/2017	Motion - Reinstate (regarding administrative dismissal)	
05/19/2017	Correspondence - Incoming (letter from Attorney Hiser)	
05/19/2017	Dispositional Decision - Order	
05/11/2017	Record - Record on Appeal Filed (document is not record on appeal)	
05/11/2017	Final Brief - Appellant	
05/09/2017	Correspondence - Outgoing (letter to appellant regarding record on appeal)	
05/04/2017	Correspondence - Incoming (Letter from Attorney Hiser In response to appellant letter regarding the record on appeal)	
05/04/2017	Correspondence - Incoming (Appellant letter regarding the record on appeal)	
05/01/2017	Deficiency - Deficiency Letter Sent-appellant final brief	
05/01/2017	Correspondence - Outgoing (Letter to appellant regarding record on appeal)	
05/01/2017	Correspondence - Incoming (Letter from appellant in response to letter from Helen Hiser)	
04/24/2017	Correspondence - Incoming (Letter from Helen Hiser regarding deficiencies with appellant final brief-deficiency letter sent to appellant)	
04/20/2017	Final Brief - Appellant	
04/20/2017	Designation of Matter - Designation of Matter Filed- 2nd by appellant	
04/13/2017	Correspondence - Outgoing-unbound originals letter	
04/07/2017	Non-Dispositional Decision - Order	

RECEIVED

OCT 31 2017

S.C. SUPREME COURT

04/03/2017 Designation of Matter - Designation of Matter Filed
04/03/2017 Initial Brief - Respondent
03/27/2017 Motion - Extension of Time (2nd) (Respondents)
03/09/2017 Correspondence - Incoming (notice of appeal filing fee)
03/07/2017 Motion - Return
03/03/2017 Non-Dispositional Decision - Extension Granted
03/03/2017 Correspondence - Incoming (notice of appearance)
03/02/2017 Non-Dispositional Decision - Order (to amend appeal)
03/01/2017 Motion - Extension of Time (1st) (respondent brief)
01/27/2017 Designation of Matter - Designation of Matter Filed (appellant)
01/27/2017 Deficiency - Correction
01/23/2017 Deficiency - Deficiency Letter Sent (appellant initial brief)
01/18/2017 Initial Brief - Appellant
01/18/2017 Motion - Other Motion (to amend the appeal)
12/15/2016 Deficiency - Correction (Unredacted)
12/07/2016 Deficiency - Deficiency Letter Sent
12/07/2016 Correspondence - Outgoing (Initial letter)
12/05/2016 Transcript Documents - Transcript Ordered
12/05/2016 Motion - Proceed In Forma Pauperis or Waive Costs
12/05/2016 Notice of Appeal (CIVIL) - Initial



The South Carolina Court of Appeals

Reginald Evans, Employee, Claimant, Appellant,

v.

Exel Inc., Employer, and New Hampshire Insurance
Company, Carrier, Respondents.

Appellate Case No. 2016-002448

ORDER

This appeal was dismissed due to Appellant's failure to serve and file the record on appeal. Appellant filed a petition to reinstate, and on July 19, 2017, this court ordered Appellant to serve the record on appeal and file a proof of service. Appellant served a record on appeal; however, Respondents have filed a new motion to dismiss because the record did not include all matters designated by both parties. Respondents' new motion to dismiss is denied because this appeal is currently in dismissal status. Within twenty days of the date of this order, Appellant shall serve an amended record on appeal that includes all matters designated by both parties. Appellant shall file the proof of service with this court. This court will act on the petition to reinstate in twenty days or upon service of a proper record on appeal. No further extensions will be granted absent a showing of extraordinary circumstances.


FOR THE COURT

Columbia, South Carolina

cc:

Reginald Evans
Amanda Anderson Mellard, Esquire
Helen F Hiser, Esquire

FILED

August 15, 2017

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Exel Inc. Employer, and New
Hampshire Insurance
Company, Carrier

Respondent,

v.

Reginald Evans, Employee,
Claimant

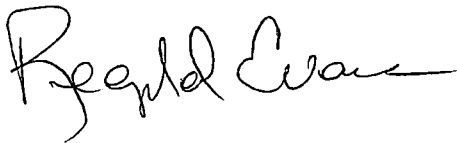
Petitioner.

MOTION AND AFFIDAVIT TO PROCEED IN FORMA PAUPERIS

I, Reginald Evans, state that I am the Petitioner and that do not have the funds available to pay the cost of filing , cost of this motion and service in the present matter. I hereby request in accordance with Rule 3(b)(1) that the Petitioner 's Petition for a Writ of Certiorari be filed and service made without costs.

Respectfully submitted,

October 27, 2017



Reginald Evans
1200 Broad Street #123
Sumter, SC 29150
484-725-0621
reggevans@gmail.com

RECEIVED

OCT 31 2017

S.C. SUPREME COURT

**PETITION FOR A WRIT OF CERTIORARI TO THE
COURT OF APPEALS**

THE STATE OF SOUTH CAROLINA
In The Supreme Court

THE SOUTH CAROLINA COURT OF APPEALS

Opinion No. 2016-002448 (S.C. Ct. App. filed October 6, 2017)

Exel Inc. Employer, and New
Hampshire Insurance
Company, Carrier

Respondent,

v.

Reginald Evans, Employee,
Claimant

Petitioner.

PETITION FOR A WRIT OF CERTIORARI

Reginald Evans
1200 Broad Street #123
Sumter, SC 29150
(484) 725-0621
reggevans@gmail.com
Pro Se Petitioner

Other Counsel of Record:
Helen F. Hiser
Post Office Box 650007
Mt. Pleasant, South Carolina 29465
(843) 576-2930
Attorney for Respondent

RECEIVED

OCT 31 2017

S.C. SUPREME COURT

INDEX

Certificate of Counsel 1

Questions Presented 1

Statement of the Case..... 1

Arguments

1. THE COURT OF APPEALS SHOULD NOT HAVE DISMISSED THE APPEAL ON THE BASIS OF PETITIONER FAILED TO PROVIDE A SUFFICIENT RECORD FOR REVIEW.2

2. THE COURT OF APPEAL DID NOT PROPERLY APPLY SUBSTANTIAL EVIDENCE STANDARD TO THE EVIDENCE IN THIS CASE WHEN DISMISSING THE APPEAL.3

3. THE WORKER COMPENSATION COMMISSION IMPROPERLY INFUSE WAGE LOSS INTO AND AS A CONSIDERATION FOR AN AWARD MADE UNDER THE SCHEDULED-MEMBER STATUTE.3

4. THE WORKER COMPENSATION COMMISSION IMPROPERLY REFUSED TO REIMBURSE FOR LEGAL FEES.4

5. THE WORKER COMPENSATION COMMISSION IMPROPERLY REFUSE TO ORDER THE PAYMENT OF 35% PERMANENT PARTIAL DISABILITY BENEFITS.4

6. THE WORKER COMPENSATION COMMISSION IMPROPERLY REFUSED TO ORDER THE PAYMENT FOR DISFIGUREMENT.....5

Conclusion 5

CERTIFICATE OF COUNSEL

Counsel for petitioner certifies that the Petition for Rehearing was made and finally ruled on by the Court of Appeals on October 6, 2017.

QUESTIONS PRESENTED

1. Whether the court of appeals erred in dismissing appeal on the basis that Petitioners failed to provide a sufficient record for review?
2. Did the court of appeals properly apply the substantial evidence standard to the evidence in this case when dismissing the appeal?
3. Did the Workers Compensation Commission improperly infuse wage loss into and as a consideration for an award made under the scheduled-member statute?
4. Did the Workers Compensation Commission improperly refuse to reimburse for legal fees?
5. Did the Workers Compensation Commission improperly refuse to order the payment of 35% Permanent Partial Disability benefits?
6. Did the Workers Compensation Commission improperly refuse to order the payment for disfigurement?

STATEMENT OF THE CASE

On February 21, 2015 Petitioner sustained right leg crush injury while working for the Respondent. As result of the injury, Petitioner suffered an open wound which became infected. The Petitioner now has a 6 to 7 inch scar on the right leg which is about 2 inches in width which became a Keloid. On July 8, 2015 an EMG study confirmed permanent nerve damage in the right leg.

On January 8, 2016 Petitioner's doctor released the Petitioner he was at maximum medical improvement. Petitioner's doctor opined the Petitioner has permanent light duty restrictions, which also include of no lifting over 20 lbs, no sitting for more than 2 hours and no standing for more than 2 hours.

The hearing Commissioner Aisha Taylor issued an order and finding which stated “ based on the medical evidence including Claimant’s impairment rating and permanent work restrictions, which we find severely limits his ability his ability to return to work given his work history.”

FACTS

1. The Petitioner was covered employee at all times stated.
2. The Petitioner employer was covered under the Act.
3. The Petitioner did sustain a compensable injury in the course and scope of his employment to the right leg.

The Court of Appeals dismissed the appeal, The full Commission affirmed the judgment of the Commissioner. *Reginald Evans, Employee, Claimant v. Exel Inc. Employer, New Hampshire Insurance Company, Carrier*, Op. No. 2016-002448 (S.C. Ct. App. filed October 5, 2017). Petitioner seeks a writ of certiorari to review those decisions.

ARGUMENT

1. THE COURT OF APPEALS SHOULD NOT HAVE DISMISSED THE APPEAL ON THE BASIS OF PETITIONER FAILED TO PROVIDE A SUFFICIENT RECORD FOR REVIEW.

In *Woodson v. DLI Props*, Op. No.2011–UP–291 (S.C. Ct.App. filed June 14, 2011). “The court of appeals concluded it could not determine whether summary judgment was appropriate because the circuit court's order failed to articulate its reasons for granting summary judgment. Id. The court of appeals noted that, ordinarily, under *Bowen v. Lee Process Systems Co.*, 342 S.C. 232, 536 S.E.2d 86 (Ct.App.2000), it would vacate the circuit court's grant of summary judgment and remand the case for more specific findings and analysis. Id. However, relying in part on Rule 210(h), SCACR, the court of appeals declined to do so “because the trial court might have articulated its decision during the summary judgment hearing and [Petitioners] failed to provide a hearing transcript.” Id. (emphasis added).

Further, a decision on a motion for summary judgment is based on depositions, interrogatories, affidavits, and other evidentiary material provided by the parties. See Rule 56(c), SCRCP; see also *Quail Hill, L.L.C. v. Cnty. of Richland*, 387 S.C. 223, 234, 692 S.E.2d 499, 505 (2010) (stating appellate courts apply the same standard as the trial court under Rule 56(c), SCRCP).

Here, Petitioners provided the requisite evidentiary material to the court of appeals. Therefore, we find the court of appeals did have a sufficient record before it to permit meaningful appellate review and make a decision on the merits. See *Quail Hill*, 387 S.C. at 234, 692 S.E.2d at 505; *Hamilton v. Greyhound Lines E.*, 281 S.C. 442, 444, 316 S.E.2d 368, 369 (1984) (stating the appealing party has the burden of providing a sufficient record such that the appellate court can make an intelligent review).

The Petitioners contend that the Worker Compensation Order was sufficient for the Court of Appeals to make an intelligent review and a trial de novo.

2. THE COURT OF APPEAL DID NOT PROPERLY APPLY
SUBSTANTIAL EVIDENCE STANDARD TO THE EVIDENCE IN
THIS CASE WHEN DISMISSING THE APPEAL.

In *Woodson v. DLI Props, Op. No.2011-UP-291 (S.C. Ct.App. filed June 14, 2011)*. “Additionally, what the circuit court “might” have stated during the hearing on the motion for summary judgment is irrelevant, as a written order constitutes a final order and final judgment of the lower court. See *Ford v. State Ethics Comm*, 344 S.C. 642, 645-646, 545 S.E.2d 821, 823 (2001) (citing Rule 58, SCRCP) (stating “the written order is the trial judge's final order and as such constitutes the final judgment of the court”); see also *Hagood v. Summerville*, 362 S.C. 191, 194, 607 S.E.2d 707, 708 (2005) (citing *S.C.Code Ann. § 14-3-330(1)* (1976); Rule 72, SCRCP; Rule 201(a), SCACR; *Mid-State Distribs, Inc. v. Century Imps., Inc.*, 310 S.C. 330, 335, 426 S.E.2d 777, 781 (1993)) (“An appeal ordinarily may be pursued only after a party has obtained a final judgment.”). In the presence of a written order, the court of appeals erred in affirming summary judgment on the basis that Petitioners did not provide the hearing transcript as part of the Record. See *Ford*, 344 S.C. at 645-646, 545 S.E.2d at 823; see also Rule 56(c), SCRCP (listing the factual material that is reviewable for purposes of deciding whether to grant a motion for summary judgment).”

The Court Appeal did not give any reason for the dismissal or why the Record of appeal was not sufficient.

3. THE WORKER COMPENSATION COMMISSION IMPROPERLY
INFUSE WAGE LOSS INTO AND AS A CONSIDERATION FOR AN
AWARD MADE UNDER THE SCHEDULED-MEMBER STATUTE.

In *Henton T. Clemmons, Jr., Employee, Petitioner, v. Lowe's Home Centers* the Supreme Court found: For the foregoing reasons, we conclude the Commission's findings were not supported by substantial evidence and we reverse the court of appeals. We hold Clemmons has lost more than fifty percent of the use of his back and remand to the Commission for a new hearing to determine his percentage of impairment and whether the presumption of permanent and total disability under section 42-9-30(21) has been rebutted.

Worker Commission failed to explain how it came to 35% when the employer state the Petitioner was unable to perform his duties.

4. THE WORKER COMPENSATION COMMISSION IMPROPERLY REFUSED TO REIMBURSE FOR LEGAL FEES.

In *UTICA-MOHAWK MILLS and UTICA MUTUAL INSURANCE COMPANY, Appellants, v. CURTIS ORR, Respondent*. The South Carolina Supreme Court cited *Hughes v. Enloe*, 38 So. 2d 225 which found:

“Plaintiff having lost power to grip and hold the tools necessary to perform the work which he was accustomed to perform, it follows that he is unable any longer, due to this permanent injury, to perform work of the same or similar character as he was accustomed to perform prior to his injury, and therefore, in our opinion, he is entitled to compensation for permanent, total disability.

For the reasons assigned, the judgment of the Court of Appeal is reversed insofar as it denied to plaintiff his claim for compensation *Page 543 for permanent and total disability, and it is now ordered that he be awarded compensation of 65 per cent of his weekly wages of \$20.00 not to exceed 400 weeks, less a credit of compensation previously paid during 17 weeks; in all other respects the judgment of the Court of Appeal is affirmed; defendants to pay all costs.”

The Petitioner is asking the court to determine if the Petitioner is entitled to be reimbursed for paying \$7,178.42 attorney’s fees and \$605.94 for attorney’s cost and expenses.

5. THE WORKER COMPENSATION COMMISSION IMPROPERLY REFUSE TO ORDER THE PAYMENT OF 35% PERMANENT PARTIAL DISABILITY BENEFITS.

In *UTICA-MOHAWK MILLS and UTICA MUTUAL INSURANCE COMPANY, Appellants, v. CURTIS ORR, Respondent*. “Appellants complain that the total amount of compensation for partial disability may in some cases approach the amount allowable for total disability. The answer is that the weekly maximum which is allowable for total disability and for partial disability is the same. Sections 72-151 and 72-152. However, the weekly payments for partial disability are limited to a total of 300 weeks under Sec. 72-152, whereas the total may be 500 weeks for total disability under the terms of Sec. 72-151.

As noted at the outset and now repeated for emphasis, there was no appeal from the award of the Commission and *232 the correctness of it is not in question in this proceeding which is concerned only with the construction and result of the award in the light of the applicable terms of the Compensation Act. That, therefore, is the extent of our holding.

The judgment is reversed and the case is remanded to the trial court for recalculation of the payments due under the award in accord with the views herein expressed, except with respect to medical expenses as to which there was no exception. Reversed and remanded.”

In this case the Court said: "We think that the principle applied in the decision is correct because it follows the terms of the act as will be seen, but the court fell into error in failing to allow appellants credit for the overpayment of compensation as for total disability instead of partial, which was the award. This refers to the period of Feb. 5, 1953-Feb. 19, 1954. The court simply applied the percentage of partial disability to respondent's wages at the time of the accident and took 60% of it to arrive at the weekly compensation when respondent was not working."

If the Court use updated Code it would be Sections 49-9-10 and 42-9-20. However, the weekly payments for partial disability are limited to a total of 195 weeks under Sec. 49-9-30(16), whereas the total may be 500 weeks for total disability under the terms of Sec. 42-9-10. The Petitioner is asking the court to recalculate the payment due under the award in accordance with Section 49-9-10 total disability at 500 weeks. Also to determine if the Commission improperly gave a credit of overpayment of TTD benefits paid from January 8, 2016 through May 13, 2016 equaling 18 weeks totaling \$8,571.25. The Court should determine if the award should be the AWW of $(\$714.24 \times .35) \times 500$,

6. THE WORKER COMPENSATION COMMISSION IMPROPERLY REFUSED TO ORDER THE PAYMENT FOR DISFIGUREMENT.

S.C. CODE SECTION 42-9-30 (23) proper and equitable benefits must be paid for serious permanent disfigurement of the face, head, neck, or other area normally exposed in employment, not to exceed fifty weeks. Where benefits are paid or payable for injury to or loss of a particular member or organ under other provisions of this title, additional benefits must not be paid under this item, except that disfigurement also includes compensation for serious burn scars or keloid scars on the body resulting from injuries; in addition to any other compensation.

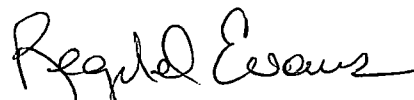
Both the Commissioner and the Full Worker Compensation Panel saw and noted the Scar on the Petitioner was a Keloid and refused to order payment for disfigurement. The Court should determine if the award should be the AWW of $(\$714.24 \times .35) \times 50$.

CONCLUSION

For the reasons stated, petitioner asks the Court to grant the petition for a writ of certiorari.

Respectfully submitted,

October 27, 2017



Reginald Evans
1200 Broad Street # 123
Sumter, SC 29150
(484) 725-0621
Pro Se Petitioner

RECEIVED

OCT 31 2017

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Exel Inc. Employer, and New
Hampshire Insurance
Company, Carrier

Respondent,

v.

Reginald Evans, Employee,
Claimant

Petitioner.

CERTIFICATE OF SERVICE

I, Reginald Evans, do hereby certify that on this 28TH day of October 2017, a true and correct copy of foregoing Petitioner's Petition for a Writ of Certiorari has been served upon the Defendant by depositing the same in the U.S. Mail postage pre-paid, address as follows: Helen F. Hiser, Post Office Box 650007, Mt. Pleasant, South Carolina 29465.

Respectfully submitted,

October 28, 2017



Reginald Evans
1200 Broad Street #123
Sumter, SC 29150
484-725-0621
reggevans@gmail.com

RECEIVED

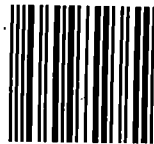
OCT 31 2017

S.C. SUPREME COURT

Reginald Evans
1200 Broad Street #123
Sumter, SC 29150



1000



29201

U.S. POSTAGE
PAID
ALABASTER, AL
35007
OCT 28, 17
AMOUNT

\$1.12

R2304E104894-17

S.C. Supreme Court Building
1231 Gervais Street
Columbia, SC 29201
ATTN: Clerk of Court