

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission
Appellate Panel

Appellate Case No.: 2015-002575

RECEIVED
NOV 17 2017
SC Court of Appeals

Johnny Tucker, Employee, Appellant,

v.

SC Department of Transportation, Employer,
and State Accident Fund, Carrier, Respondents.

RETURN TO THE PETITION FOR REHEARING

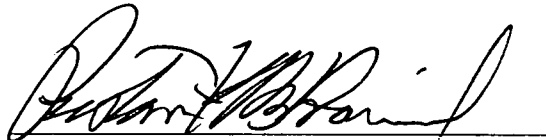
BY WAY OF RETURN to the Petition for Re-Hearing filed by the Respondents pursuant to Rule 221 SCACR, pursuant to Rule 240 (e) SCACR the following Return is filed. Also pursuant to SCACR Rule 240 (e) due to the service on the Appellant being by mail a calendar error was made and the Appellant would request an enlargement of time within the discretion of the Court for the filing of this Return. By way of the Return, the Appellant would submit to the Court as follows:

1) That upon review the Court will note that the Petition for Re-Hearing is simply a restatement of argument I. and I(a), made by the Petitioners' in their brief to this Court. In the Opinion on this issue, this Court simply re-applied and re-affirmed its decision in Wilson v. Charleston County School District 419 S.C. 442,798 S.E. 2nd 449 (SC App 2017) and it's decision in the matter of Gattis v. Murrell Inlets VFW # 10420,353 S.C. 100 576 S.E. 2nd 191 (S.C. App 2003). Those decisions simply re-affirmed and applied the South Carolina Supreme Court's decision in Allen v. Benson Outdoor Advertising Co, 236 S.C. 22, 112 S.E. 2nd 720 (1960) concluding that the claim (application) simply has to be filed not that a Hearing has to be requested or held within twelve months. The Court in Allen reiterated the time-honored rule that Worker's Compensation Statutes are not the subject of a, "literal and strict construction" in reference to benefits to injured workers but are to be interpreted under the well settled rule of a, "liberal construction" in favor of benefits to the injured workers.

2) That the purpose of the Petition for Re-Hearing is not, "to have the case tried in the Appellate Court a second time." Kennedy vs SC Retirement Systems, 349 SC 531, 564 SE 2nd 322 (2001), which is what the Respondents seek.

WHEREFORE, the Court having properly considered the argument in this regard made by the Petitioners the first time around and the Petition for Re-Hearing being nothing but a re-argument, the Petition should be denied.

Respectfully Submitted,



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and

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Attorneys for Appellant

November 15, 2017

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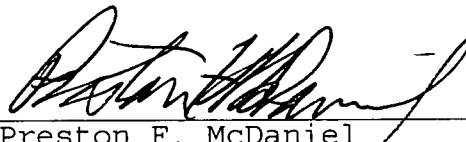
v.

SC Department of Transportation, Employer,
and State Accident Fund, Carrier, Respondents.

PROOF OF SERVICE

I certify that I have served the RETURN TO THE PETITION FOR REHEARING by depositing a copy of it in the United States Mail, postage prepaid, on NOVEMBER 15, 2015 addressed to: Sarah S. Sutusky, Attorney, Wilson Jones Carter & Baxley, 3600 Forest Drive Ste 204, Columbia, SC 29204.

Dated: November 15, 2017



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Attorney for Appellant

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Proudly representing injured workers
for over 30 years.

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November 15, 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

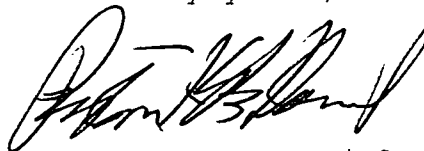
**RE: Johnny Tucker, Employee, Appellant v. SC Department
of Transportation, Employer, and State Accident Fund,
Carrier, Respondents
Appellate Case No. 2015-002575**

Dear Ms. Kitchings:

Enclosed please find the original and seven (7) copies of Appellant's **REPLY TO PETITION FOR REHEARING** in the above-referenced matter. Please file the original and return a clocked-in copy to me in the enclosed, self-addressed, stamped envelope.

By copy of this letter, I am serving Counsel of Record with a copy of same.

Sincerely yours,



Preston F. McDaniel

PFM/smk
Enclosures

cc: Sarah S. Alphin, Attorney