

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
South Carolina Workers' Compensation Commission

Commissioner Avery B. Wilkerson, Jr., Chair of Appellate Panel

Case Number 1503413

Appellate Case Number 2017-001408

James Thorpe, Employee, Claimant, Respondent,

vs.

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

FINAL REPLY BRIEF OF APPELLANTS

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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. (R. p. 138, line 14 - p. 194, line 13). There is also no dispute that Racks was the sole and personal property of the Respondent.

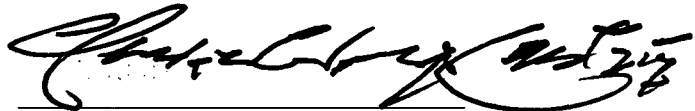
There is no factual basis to support a legal conclusion that the specific injury in this case, a dog bite, has a direct connection with the Respondent's work activities with the Town of Bowman. The Single Commissioner in this case correctly found that the Respondent had finished any work or training he had undertaken with Racks on the morning in question, and at the time the bit occurred. (R. p. 10).

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. (R. p. 155, lines 8 - 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. (R, p. 181, lines 8 - 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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November 16, 2017

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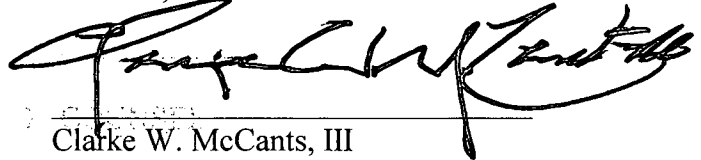
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CERTIFICATE OF COUNSEL

I hereby certify that the Final Brief of the Appellants and the Final Reply Brief of the Appellants comply with Rule 211(b), SCACR.

November 16, 2017

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