

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION APPELLATE PANEL

Susan S. Barden, Commissioner, Chair
Aisha Taylor, Commissioner
Avery B. Wilkerson, Jr., Commissioner

RECEIVED

DEC 12 2017

SC Court of Appeals

Appellate Case No. 2017-002069
W.C.C. File No. 1604067

Courtney Forrest, Employee/Respondent,

v.

ADS Waste Holdings, Inc., Employer/Appellant,

and

Arch Insurance Company, Carrier/Appellant.

Return to Appellants' Motion to Reinstate/File Out of Time

This Court should deny Appellants' Motion to Reinstate/File Out of Time. On May 3, 2016, Employee/Respondent filed a Notice of Claim/Request for Hearing with the South Carolina Workers' Compensation Commission relating to an injury that occurred on April 12, 2016. Appellants denied this claim and the Single Commissioner heard the matter on August 10, 2016. On October 25, 2016, Commssioner T. Scott Beck issued his Decision and Order finding Employee/Respondent sustained a compensable injury on April 12, 2016 and awarding him causally related medical care and temporary total disability benefits from the date of injury to the present and continuing. Within the statutory period, Counsel for Appellants filed an Application

for Review. At Appellants' request, the Appellate Panel continued this matter before finally hearing oral argument on June 19, 2017. On September 6, 2017, the Appellate Panel affirmed the Decision and Order of the Single Commissioner in full. On October 5, 2017, Appellants filed a Notice of Appeal with this Court and served a copy of the same on Counsel for Employee/Respondent.

Rule 207 of the South Carolina Appellate Court Rules requires an appellant to request a copy of the hearing transcript within ten (10) days after service of the notice of appeal. As noted above, in this matter Appellants served their Notice of Appeal on October 5, 2017. Pursuant to Rule 207, SCACR Appellants had an obligation to request the hearing transcript on or before October 15, 2017. Appellants failed to do so.

On October 23, 2017, this Court mailed correspondence to Appellants' counsel informing them that the time for requesting the hearing transcript had expired and giving them ten (10) days to provide proof of ordering the transcript and file a motion to request permission to order the transcript out of time. Appellants failed to do so.

On November 9, 2017, this Court again mailed correspondence to Appellants' counsel informing them that the time for requesting the hearing transcript had expired and giving them ten (10) days to provide proof of ordering the transcript and file a motion to request permission to order the transcript out of time. Appellants again failed to do so.

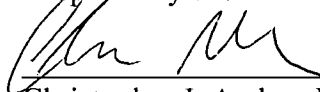
Accordingly, on December 4, 2017 this Court properly dismissed Appellants' appeal for their repeated failures to comply with Rule 207, SCACR, and the letters dated October 23, 2107 and November 9, 2017.

Appellants now move before this Court to have their appeal reinstated and allow them to request the transcript outside of the deadline set forth in Rule 207, SCACR. The grounds set forth

for Appellants' motion are that they did not receive the letters mailed by this Court on October 23, 2017 and November 9, 2017. No affidavit is offered in support of this claim nor is any authority provided for tolling the deadline for such a reason. The deadline to request the transcript is set forth clearly in the rules of this Court and counsel for Appellants knew or should have known of the deadline regardless of whether or not they received the correspondences from this Court. According to the letter attached to their Motion to Reinstate/File Out of Time, Appellants did not request the hearing transcript until December 7, 2017, fifty-four (54) days beyond the initial ten (10) day deadline and Appellants provide no justification for such a delay.

Despite receiving favorable rulings from the Single Commissioner and Appellate Panel in this matter, Employee/Respondent has yet to receive any benefits for an injury that occurred on April 12, 2016 and a Commissioner found compensable on October 25, 2016. Reinstating Appellant's appeal would result in substantial prejudice to Employee/Respondent in the form of further delaying benefits he is entitled to under the South Carolina Workers' Compensation Act. Accordingly, Employee/Respondent respectfully request that this Court deny Appellants' Motion to Reinstate/File Out of Time.

Respectfully submitted,



Christopher J. Archer, Esquire
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2519 Devine Street, Suite A
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803-251-4517
Attorney for Employee/Respondent
SC Bar No.: 101662

Columbia, South Carolina
December 11, 2017

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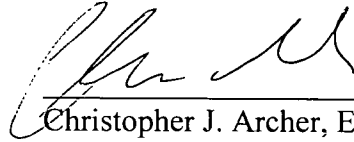
Proof of Service

I certify that I have served a copy of the **Return to Appellants' Motion to Reinstate/File Out of Time** on R. Daniel Addison, Esquire and David M. Bornemann, Esquire, Counsel for the Appellants, at the address below by depositing a copy of same in the United States Mail, postage prepaid, on December 12, 2017.

R. Daniel Addison, Esquire
David M. Bornemann, Esquire
Hedrick Gardner Kincheloe & Garofalo LLP
1301 Gervais Street, Suite 1900
Columbia, SC 29201

- signature page to follow -

Respectfully submitted,



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Columbia, South Carolina
December 12, 2017

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December 12, 2017

The Honorable Jenny Abbott Kitchings
Clerk of Court, South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

RECEIVED

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SC Court of Appeals

RE: *Courtney Forrest v. ADS Waste Holdings, Inc. and Arch Insurance Company*
WCC File No.: 1604067
Appellate Case No.: 2017-002069
DOI: April 12, 2016
Our File No.: 7000-0140

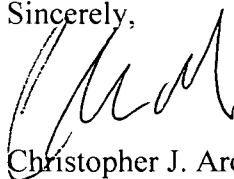
Dear Ms. Kitchings:

Enclosed for filing, please find an original and six copies of a **Return to Appellants' Motion to Reinstate/File Out of Time** along with a **Proof of Service** in regard to the above-referenced case.

By copy of this letter, I am serving the same upon the attorneys for the Appellants, R. Daniel Addison, Esquire and David M. Bornemann, Esquire.

Thank you for your assistance with this matter and should you have any questions, please do not hesitate to contact me.

Sincerely,



Christopher J. Archer

CJA
Enclosures

cc: R. Daniel Addison, Esquire
David M. Bornemann, Esquire