

Terry McCall # 233236
Livesay Corr. Inst.
A-Yard
P.O. Box 580
Una, S.C. 29378

Dated 12-11-17

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DEC 13 2017

SC Court of Appeals

In Re: Terry McCall vs Trojar Labor, (1) Appellate Case No. 2016-00457
Response to letter dated November 30, 2017 Court of Appeals

Dear Court of Appeals,

Please take notice that on Page (5) of the
Commissioner's Order filed February 24, 2016, it states Claimant
filed a series of motions. On Page (17), line 24 in same order
it alleges Claimant filed a number of motions.

However the motion for Newly Discovered Evidence filed was not
mentioned. Because it was already ruled upon prior to the hearing
whereby the Chair Person did waive the \$25.00 dollar filing fee,
where the same indigent status existed and was provided for form 32
for appeal, was not waived only to Block Appellants Appeal,
denying him due process of the law.

And I believe the "Only" reason for the respondents letter to you
dated January 11, 2017 asserting dismissal was based on timeliness of
Appellants Appeal, where Commissioner likely committed a clerical error
by dating form (30) as March 11, instead of March 8th according
to accompanying certificate of service

was, because that was the only error found after reviewing the record.

The disturbing acts by the Commission chair person granting one \$25.00 dollar filing fee form 32, for a motion to be heard, but denying to grant form 30, (32) to waive filing fee for Appeal where same indigent status existed, is overwhelming evidence of nothing more than to block Appellants Appeal, which has denied Appellants his legal right to Appeal.

The respondents should have a copy of the form 32 which was granted for that motion to be heard, if not, it can be obtained from the Commission's office.

If your office needs proof, let me know! The only denial the Chair person seems to use is failure to pay filing fees, no reason is stated for their failure to grant form 32, therefore the denial had no basis.

"Awaiting Reply"

S. Mr. Jerry McCall

Let me know if I can be of anymore help

At the hearing, the Carrier consented to the amendment of the Claimant's Form 50 to include a repetitive trauma injury as well as another accidental injury on June 30, 2014 to the same body parts which are the subject of the July 4, 2014 claim. McCall consented to proceeding on both claims (Transcript p. 12). After discussion with the hearing commissioner regarding the requirements set forth in S.C. Code Ann. Section 42-1-172 to establish a repetitive trauma claim, McCall withdrew his claim alleging repetitive trauma. (Transcript p. 16). In addition, he withdrew his claim for chipped teeth, acknowledging that the tooth "was already fractured at one point in time." (Transcript p. 13).

Following the hearing and the conclusion of the record in the case, McCall filed a series of Motions as follows:

September 10, 2015 "Motion To Amend Record; Motion for Rehearing on Motion to Leave Record Open, Until All Physician Records are Obtained and Presented As Evidence, Violation of Civil Rule 609(A)(2) – Due Process Equal Protection of Law; Motion to Suppress Non Convictions Used At Hearing"

September 13, 2015 "Motion to Compel Single Commissioner Subpoena Claimant's Medical File"

September 14, 2015 "Motion to Stay Hearing Decision to Allow Ample Time for Employee to Obtain Medical File by Which the Defense Counsel and Carrier Had Promised to Obtain but Failed."

These motions will be addressed in this Order.

20. When the evidence is viewed as a whole, I cannot conclude that the Claimant has met his burden as to a work related accident on either June 30, 2014 or July 4, 2014. A review of the evidence simply does not allow such a determination. The only references in the record are based on the self serving declarations of the Claimant. As to the medical records themselves, the record of July 26, 2014 is again based on the statements of the Claimant.

21. Given the Claimant's lengthy history of bitter complaints of pain in his low back, neck, right shoulder, right wrist and right hand, and his thirteen prior personal injury claims, the self serving declarations of the Claimant in the medical reports are not sufficient to make a finding of compensability.

22. McCall acknowledged pre-existing and prior injuries to virtually every body part he alleged on his Form 50. However, he maintained that these injuries were worse following his falls on June 30, 2014 and July 4, 2014 because he was able to work prior to the falls but was unable to work after the falls. (Transcript p. 31). The Commission's file, which is part of the record in this case contains Claimant's Work History and Wages which establish that following June 30, 2014, McCall worked ten (10) hours on July 1, 2, 3, 4, 7, 8, 9, 10, 11, and 14, and six (6) hours on July 12, 2014. This is inconsistent with his testimony at the hearing. Moreover, McCall testified that he stopped working with Hire Quest when he left Turning Point which is the entity through which he received his employment with Hire Quest. (Transcript p. 27).

23. The Claimant has not met his burden and is not entitled to any benefits under the Act as to the alleged work related accidents he testified to at the hearing.

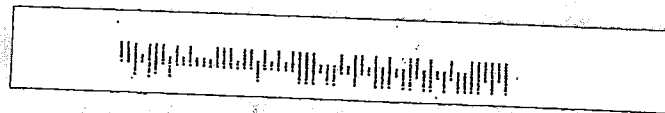
24. The Claimant has also filed a number of motions with the Commission to reconvene the hearing and reopen the record in this case. The burden as to evidence bolstering the Claimant's case rests with the Claimant. I am not persuaded that any evidence the Claimant sought to admit

Terry McCall #233236
Livesay Corr. Inst
A-Yard
P.O. Box 580
Una, S.C.
29378



South Carolina Court of Appeals
Post Office Box 11629
Columbia, S.C.
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