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Proudly representing injured workers
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SC Court of Appeals

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December 29, 2017

The Honorable Jenny Abbott Kitchings
Clerk of Court
SC Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29211

RE: Theodore P. Polansky, Employee, Claimant, Respondent,
v. SC Office of the Attorney General, Employer, and
State Accident Fund, Carrier, Appellants.
Appellate Case No.: 2016-001494

Dear Ms. Kitchings:

Under the Court's direction, we have filed our Final Respondent's Brief in the above referenced matter. I have attached 3 sample pages from the "Appendix" that the Appellants had served on us and filed with the Court which resulted in the original deficiency letter being sent to Appellant Counsel. We thought that in reference to the Appendix that the only problem was that they had numbered it wrong, but it took us 3 days to go back through and complete our Record citations in our Final Brief. As you will see from the sample pages, the Appendix is not numbered correctly, various numbers are scratched out, illegible and multiple numbers are on the page.

So what we did was we went back over and hand numbered all of the pages on the Appendix. We then went back and put in Record citations and Appendix citations in our Final Brief.

I believe based on what I see in the Record that the Court should require the Appellant's at a minimum to come to the Court and hand-number all of the pages. That is not our responsibility.

The Honorable Jenny Abbott Kitchings
December 29, 2017
Page 2 of 2

When you receive this letter, I will be out of the office and will return on January 3rd. When I return within a week of that date, I will find the time to file another Motion to Dismiss as to my opinion that the Court's review of this record is going to be a fiasco and there is no way that my client can be fairly treated in this matter and receive due process of law. As stated above, it took us days to figure out how to make the record citation in the Final Brief. I cannot image the staff attorney, law clerks and Court being able to review this in any type of effective manner.

Also, I do not want this case delayed any further. It has taken us 2 years to get to Final Briefs.

Finally, I really do not understand what happened. The Court notified us about the numerous deficiencies in a letter and that the Appellant's Counsel had 10 days to correct it and then we get another Order that the Court will accept it as is and we have 20 days to file Final Briefs.

I wanted to bring this matter to the Court's attention and advise the Court on how I intend to proceed. I really do not understand what has happened and why the Court has decided to be so lenient on this record. I have to think that this is probably partly my fault because I wanted to get this matter heard and concluded because of all this delay.

By copy of this letter, I am notifying Appellant's Counsel of this communication and how I intend to proceed and if the Court on its Motion wants to do anything further I look forward to hearing from the Court. As always, I appreciate all of the courtesies and kindnesses shown to me by the Court. I hope the Court can understand my frustration in this situation.

Sincerely yours



Dictated but not read

Preston F. McDaniel

PFM/smk
Enclosures

cc: Temus C. Miles, Esquire (via Email & US Mail)

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Casey Manning

Appellate Case No. 2016-001494

Theodore Polansky,Respondent.

v.

SC Office of the Attorney General, Employer,
and State Accident Fund,
Carrier.....Appellants.

APPENDIX TO THE RECORD ON APPEAL

Volume 1 of 2

Temus C. Miles, Esq.
McKay, Cauthen, Settana & Stublely, P.A.
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1315 Elmwood Avenue
Columbia, SC 29201
Attorney for Respondent

Symptoms/Impairments

Mr. Polansky reported that he was working as a chief investigator in charge of healthcare fraud when, on 19 October 1999, he fell down the stairs and injured his left knee. "I don't know if I hit my head or not," he said, "I know I didn't lose consciousness." He had surgery in January 2000, returned to work, and injured his back in May 2000 when lifting boxes from one office to another. He worked until December 2000 with some leave and was out until August 2001, when he retired. He has since had a spinal cord implant.

Since his 1999 fall, Mr. Polansky has reportedly experienced a reduction in sleep. He said that he currently sleeps approximately four hours each night with the use of Ambien. He said that he has less interest and ability to engage in previously enjoyed activities, such as enjoying his lake home because of his developed fear of water. He reported a decrease in energy, ability to concentrate and sex drive. He denied suicidal ideation. Current risk factors for suicide include symptoms of anxiety and frustration with cognitive difficulties. Protective factors include his supportive relationship with his girlfriend and his willingness to get help. Based on Rudd et al's 2001 criteria for determining suicide risk assessment, Mr. Polansky is currently at No Risk for self-harm. The corresponding level of appropriate mental health care is outpatient therapy with recurrent risk assessment.

Mr. Polansky reported that he is most concerned about what he perceives to be his slipping cognitive abilities. He said that he cannot remember to take his medications and, because he cannot remember to turn off the stove, he stopped cooking approximately one year ago. Ms. DuBose is therefore preparing his medications. He has word-finding difficulty and often finds himself forgetting where he is going when he gets on the interstate; he ends up heading in a wrong direction. He no longer reads, he said, and cannot remember how to operate a computer. He reportedly has difficulty spelling and he can no longer add or do calculations. "My girlfriend handles all of the finances," Mr. Polansky said. He has not had seizures.

Mr. Polansky said that he has a piece of shrapnel in his eye from an accident that occurred while working at USC. He said that it does not hurt but he has been advised never to have an MRI; "it would pull out the shrapnel and may cause me to go blind." He denied a history of high blood pressure. There was no family history of dementia, as far as he knew. He completed college and maintained 3.5 gpa in order to stay on scholarship. He denied ever failing a class or being held back a grade.

His girlfriend, Gale DuBose, was interviewed by phone on 10 October 2007. She indicated that she first noticed problems with Mr. Polansky's word-finding problems. "He had problems with this for several years," she said, "but it has progressively gotten worse." He also has difficulty remembering what he did from one day to the next, Ms. DuBose said. "He'll remember if he goes somewhere, but he won't remember something like working in the yard or doing something around the house." She denied noticing any major differences in his personality, aside from his lack of confidence in his mental abilities and his more depressed mood.

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 COPY

June 4, 2001

RECEIVED JUN 05 2001

Ms. Jeanne Beard
Case Manager
PO Box 429
Chapin, SC 29036

RE: Theodore Polansky


Dear Ms. Beard:

I continue to treat Mr. Ted Polansky for a revised diagnosis of Bipolar Disorder (depressed, psychotic) with a secondary diagnosis of Obsessive-Compulsive Personality. Since my last correspondence with you, Mr. Polansky's condition has deteriorated due to transitional stresses of moving toward retirement disability in concrete ways and of moving out of the Intensive Outpatient Program (IOP) at Palmetto Baptist Medical Center to the Dialectic Behavioral Therapy Program (DBT). Rather acutely, Mr. Polansky began to hear noises at the windows, saw images of rats and snakes associated with paranoia and minor confusion. Interestingly enough, Ted has experienced, years ago, minor psychotic symptoms, but minimally so, with stress. I have placed him on Risperdal for these psychotic symptoms with some remission but with side effects of enuresis and dry mouth. I have reduced the Risperdal. Ted continues to take Wellbutrin for his depression and Depakote ER 1000 mg for his mood stability.

Included are copies of my office notes. I will continue to see Mr. Polansky on a weekly basis during his DBT especially due to his psychotic features secondary to the transitional aspects as mentioned above.

In general, Ted is much better with greatly reduced depression and mood instability as he moves toward retirement disability. I would like to personally thank you for your generous assistance and availability to Mr. Polansky.

If you should have any further questions, please feel free to contact at the number and/or address above.

1553
P. 
159

DATE: 08/19/2002

PATIENT: POLANSKI, TED

CHIEF COMPLAINT: "I am doing better."

HISTORY: Mr. Polanski is a 35-year-old gentleman with RSD in the left lower extremity and radiculopathic pain in the right lower extremity. He failed all interventional and conservative treatment but actually came to have spinal cord stimulation. He came to have a trial with spinal cord stimulation, which was successful and permanent implantations followed. Unfortunately, the lead migrated shortly following implantation to cover more of the right lower extremity. A second lead was placed approximately two months ago, which nicely covers the left lower extremity as well. He now has essentially full coverage with the back and legs. Has problems with enuresis only when he turns stimulator "way out" and leaves them on at night. So, essentially he knows how to avoid this now. He is doing well with rehabilitation and recommendation has been made that he use a rolling walker. The pain seems to be worse when he sits for an extended period of time, otherwise he is doing well and looking forward to continue the rehabilitation. He finds that a number of his muscles are "sore" but realizes that he has not used a number of these muscle groups for some time. In particular, his ankle is sore but I pointed out to him that he has been on crutches for so long that his ankles have been spared for the most part. Case manager, Jeanie Beard did a home evaluation and has made a number of recommendations that we will follow as well.

PHYSICAL EXAMINATION: Vitals: Blood pressure 126/74, pulse 75, respirations 16, SaO2 96, weight 184 pounds. Again accompanied by significant other and Jeanie Beard, the case manager. The session was devoted to counseling and encouragement for continued rehabilitation and discussion of the changes that were recommended including the rolling walker.

IMPRESSION:

1. RSD, left lower extremity.
2. Right lower extremity radiculopathy.
3. Chronic back and leg pain.
4. Continued improvement with spinal cord stimulation and rehabilitation.

PLAN:

1. Begin using a rolling walker and avoid using crutches.
2. Handrails would be placed around the home.

McDaniel Law Firm
1315 Elmwood Avenue
Columbia, SC 29201

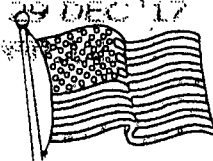
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