

IN THE STATE OF SOUTH CAROLINA  
In The Court Of Appeals

APPEAL FROM SOUTH CAROLINA WORKER'S COMPENSATION  
FULL APPELLATE PANEL

Case No. 2016-000598

**RECEIVED**  
MAR 05 2018  
SC Court of Appeals

Clarence B. Jenkins Jr., Employee, .....Appellant,

v.

Amazon.Com DEDC, LLC, Employer and  
American Zurich Ins. Co., Carrier, .....Respondents.

APPELLANT'S REPLY

Appellant has stated in a Motion: Appellant's Motion To Submit Pertinent Documents Against Respondents Distortions Declaring Violations Of Rule 4.1 and 8.2 dated February 13, 2018 and provided medical documents that Respondents was in possession of records by subpoena and had knowledge of them. South Carolina Worker's Compensation Commission (Herein after SCWCC) issued the subpoena therefore had knowledge of medical documents which became part of the commission's record. SCWCC must consider the entire Appellant's worker's compensation claim when issuing a Decision and Order. Appellant did comply with SC Code of Law R67-611 which does not required a Pro Se Claimant to filed a pre-hearing brief but still was denied fairness and justice at both hearings. Commissioner Michael Campbell II stated in his Decision

and Order dated December 14, 2015 that no disability payments were not paid which became a fraudulent document due to benefits compensation from Liberty Mutual, Amazon.Com and Aetna because of work injury which has been admitted by Respondents. In a senseless effort by Respondents to claimed disability payments of a work injury is different from worker's compensation disability payments then considered direct short-term disability payments from Amazon.Com which has been provided to the COURT and admitted.

Appellant has additional documents to verify that SCWCC and Respondents had pertinent information pertaining o worker's compensation claim which was received by the commission

Appellant has stated that Respondents had knowledge of, possession of documents by subpoena and did not produce them as record to SCWCC is a violation of South Carolina Code of Laws 42-9-440, 38-55-530(D) and 42-1-705(C). Respondents has just acknowledge having documents of pertinent medical records by subpoena in their latest motion which is relevant. See attachments.

SECTION 42-9-440: Suspected false statements or misrepresentations to be reported to Insurance Fraud Division of Office of Attorney General. The commission shall report all cases of suspected false statement or misrepresentation, as defined in Section 38-55-530(D), to the Insurance Fraud Division of the Office of the Attorney General for investigation and prosecution, if warranted, pursuant to the Omnibus Insurance Fraud and Reporting Immunity Act.

SECTION 38-55-530(D): "False statement or misrepresentation" means a statement or

representation made by a person that is false, material, made with the person's knowledge of the falsity of the statement and made with the intent of obtaining or causing another to obtain or attempting to obtain or causing another to obtain an undeserved economic advantage or benefit or made with the intent to deny or cause another to deny any benefit or payment in connection with an insurance transaction, and such shall constitute fraud.

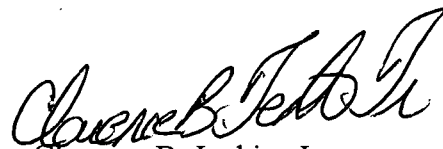
"False statement or misrepresentation" specifically includes, but is not limited to, an intentional:

SECTION 42-1-705. Employer's Answer to Request for Hearing (Form 51); specificity as to possible defenses. 42-1-705(C) A Form 51 must be signed by an attorney, verifying that the contents of the form are accurate and true to the best of the attorney's knowledge.

If the employer is unrepresented and completes a Form 51, the employer must sign the form, verifying that the contents are accurate and true to the best of the employer's knowledge.

WHEREFORE, Appellant's request this COURT received SC Code Of Laws 42-9-440, 38-55-530(D) and 42-1-705(C) of Respondents' actions to deny fairness and justice which should be declared as violations of Rule 4.1 and Rule 8.2.

February 28, 2018



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Pro Se Appellant

(3) A party shall plead in response to an amended form within the time remaining for response to the original form or within ten days after service of the amended form, whichever period may be longer, unless the Commission otherwise orders.

(4) Attorneys for the parties shall serve the opposing party according to R.67-211.

(5) If the claimant is not represented by an attorney, the Commission will serve the employer's representative or attorney.

C. An amended form must be timely filed and served. The Commissioner will determine at the hearing whether to allow a party to rely on new facts or defenses.

**HISTORY:** Amended by State Register Volume 16, Issue No. 4, eff April 24, 1992; State Register Volume 21, Issue No. 4, eff April 25, 1997.

### **67-611. Pre-hearing Brief.**

A. A claimant who is representing himself or herself is not required to file a Form 58, Pre-hearing Brief.

(1) If the claimant elects to file a Form 58, mail the Form 58 to the Commissioner's office identified on the hearing notice.

(2) The Commissioner's office will send a copy of the Form 58 to the employer's attorney.

B. Each attorney representing a party at a hearing shall file and serve a Form 58 according to the following:

(1) File a Form 58 and proof of service at least ten days before the hearing with the Hearing Commissioner's office identified on the hearing notice. Complete the Form 58 and give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements including video recordings and/or transcribed audio recordings have been taken from one of the witnesses including the claimant and indicate who has possession of same. A party is under a duty to promptly supplement a response with respect to any question directly addressed on the form and amend a response if the party obtains information upon the basis of which the party knows the response was incorrect when made, or the party knows the response thought correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

(2) Serve the opposing party according to R.67-211.

C. The Form 58 shall remain in the Commission's file but shall not constitute evidence or become part of the record of the hearing.

D. If an attorney fails to file and serve a Form 58, the Commissioner may postpone the hearing according to R.67-613 or assess against an attorney by written order a fine of up to one hundred dollars.

**HISTORY:** Amended by State Register Volume 16, Issue No. 4, eff April 24, 1992; State Register Volume 21, Issue No. 4, eff April 25, 1997.

### **67-612. Admission of Expert's Report as Evidence.**

A. This regulation does not apply to the Form 14A filed according to R. 67-1301; nor shall this regulation be construed to limit a party's right to call a witness (lay or expert) or present evidence (lay or expert) in the form of a deposition.

B. A written expert's report to be admitted as evidence at the hearing must be provided to the opposing party as follows:

(1) The moving party must provide the report to the opposing party at least fifteen days before the scheduled hearing.

(2) The non-moving party must provide to the moving party any report not provided by the moving party at least ten days before the scheduled hearing.

(3) Where both parties file hearing requests the first party to file shall be considered the moving party.

(4) The carrier shall be deemed the moving party in all hearings scheduled pursuant to a request under R. 67-504C.

**SECTION 42-9-440.** Suspected false statements or misrepresentations to be reported to Insurance Fraud Division of Office of Attorney General.

The commission shall report all cases of suspected false statement or misrepresentation, as defined in Section 38-55-530(D), to the Insurance Fraud Division of the Office of the Attorney General for investigation and prosecution, if warranted, pursuant to the Omnibus Insurance Fraud and Reporting Immunity Act.

HISTORY: 1994 Act No. 497, Part II, Section 31B, eff July 1, 1994.

**SECTION 38-55-530. Definitions.**

**As used in this article:**

**(A) "Authorized agency" means any duly constituted criminal investigative department or agency of the United States or of this State; the Department of Insurance; the Department of Revenue; the Department of Public Safety; the Department of Motor Vehicles; the Workers' Compensation Commission; the State Accident Fund; the Second Injury Fund; the Department of Employment and Workforce; the Department of Consumer Affairs; the Human Affairs Commission; the Department of Health and Environmental Control; the Department of Social Services; the Department of Health and Human Services; the Department of Labor, Licensing and Regulation; all other state boards, commissions, and agencies; the Office of the Attorney General of South Carolina; or the prosecuting attorney of any judicial circuit, county, municipality, or political subdivision of this State or of the United States, and their respective employees or personnel acting in their official capacity.**

**(B) "Insurer" shall have the meaning set forth in Section 38-1-20(25) and includes any authorized insurer, self-insurer, reinsurer, broker, producer, or any agent thereof.**

**(C) "Person" means any natural person, company, corporation, unincorporated association, partnership, professional corporation, or other legal entity and includes any applicant, policyholder, claimant, medical providers, vocational rehabilitation provider, attorney, agent, insurer, fund, or advisory organization.**

**(D) "False statement or misrepresentation" means a statement or representation made by a person that is false, material, made with the person's knowledge of the falsity of the statement and made with the intent of obtaining or causing another to obtain or attempting to obtain or causing another to obtain an undeserved economic advantage or benefit or made with the intent to deny or cause another to deny any benefit or payment in connection with an insurance transaction, and such shall constitute fraud. "False statement or misrepresentation" specifically includes, but is not limited to, an intentional:**

**SECTION 42-1-610.** Agreement or regulation does not limit liability of employer.

No contract or agreement, written or implied, and no rule, regulation or other device shall in any manner operate to relieve any employer, in whole or in part, of any obligation created by this title except as otherwise expressly provided in this title.

HISTORY: 1962 Code Section 72-131; 1952 Code Section 72-131; 1942 Code Section 7035-7; 1936 (39) 1231.

**SECTION 42-1-620.** Agreements of employee to waive rights invalid.

No agreement by an employee to waive his rights to compensation under this title shall be valid.

HISTORY: 1962 Code Section 72-132; 1952 Code Section 72-132; 1942 Code Section 7035-24; 1936 (39) 1231.

**SECTION 42-1-630.** Situation in which provisions of title are not admissible in trial.

Upon the trial of any action in tort for injuries not coming under the provisions of this title no provisions of this title shall be placed in evidence or be permitted to be argued to the jury.

HISTORY: 1962 Code Section 72-20; 1952 Code Section 72-20; 1942 Code Section 7035-16; 1936 (39) 1231; 1937 (40) 153, 613; 1939 (41) 323.

**SECTION 42-1-640.** Performance of statutory duty not excused.

Nothing in this title shall be construed to relieve any employer or employee from penalty for failure or neglect to perform any statutory duty.

HISTORY: 1962 Code Section 72-21; 1952 Code Section 72-21; 1942 Code Section 7035-14; 1936 (39) 1231.

**SECTION 42-1-650.** Limitation of actions after claim erroneously made.

If any claim for compensation is made upon the theory that such claim, or the injury upon which the claim is based, is within the jurisdiction of the commission under the provisions of this title and if the commission, or the Supreme Court or court of appeals on appeal, shall adjudge that the claim is not within this title, the claimant, or if he dies his personal representative, shall have one year after the rendition of a final judgment in the case within which to commence an action at law.

HISTORY: 1962 Code Section 72-22; 1952 Code Section 72-22; 1942 Code Section 7035-27; 1936 (39) 1231; 1999 Act No. 55, Section 44, eff June 1, 1999.

**SECTION 42-1-660.** Immunity from liability on construction projects; exceptions.

No architect, engineer, land surveyor, landscape architect, or their employees or a corporation, partnership, or firm offering architectural services, engineering services, land surveyor services, or landscape architectural services who is retained to perform professional services on a construction project is liable in any action brought pursuant to Section 42-1-560 for any injury resulting from the employer's failure to comply with safety standards on a construction project for which compensation is recoverable under this title, unless responsibility for safety practices is specifically assumed by contract or by direct supervision or continual direction of the injured employee relative to the segment of the job which results in the injury.

The immunity provided by this section does not apply to the negligent preparation of design plans or specifications.

HISTORY: 1996 Act No. 320, Section 1, eff May 20, 1996.

**SECTION 42-1-700.** Specificity of description of injured or affected body parts; Employee's Notice of Claim and Request for Hearing (Form 50).

(A) Injured or affected body parts and conditions shall be set forth with as much specificity as possible on the commission's Employee's Notice of Claim and/or Request for Hearing form, hereinafter referred to as Form 50. A Form 50 shall not describe the injured body part(s) or condition(s) as "whole person", "whole body", "all body parts", or other similar language unless the injured employee died as a result of the accident. No hearing shall be held on a Form 50 which does not conform to the requirements of this subsection.

(B) Nothing in this section prohibits a commissioner from determining the compensability of a body part or condition not listed or described on a Form 50 if:

(1) the body part or condition is proved by a preponderance of the evidence to have arisen from the injury or injuries out of and in the course of employment as set forth on the Form 50;

(2) it is proven to the satisfaction of the commissioner that the employee had no knowledge of the injury or condition on the date of the completion of the Form 50. However, the employee is required to amend the Form 50 upon discovery of the injury or condition within a reasonable time period pursuant to regulation; or

(3) in the case of a represented employee, the body part or condition is set forth on the commission's Prehearing Brief form, and such prehearing brief is timely filed with the commission and timely served upon the parties.

(C) A Form 50 must be signed by an attorney if the employee is represented, verifying that the contents of the form are accurate and true to the best of the attorney's knowledge. If the employee is not represented, the employee who signs a Form 50 must verify that the contents of the form are accurate and true to the best of the employee's knowledge.

HISTORY: 2007 Act No. 111, Pt I, Section 9, eff July 1, 2007, applicable to injuries that occur on or after that date.

**SECTION 42-1-705.** Employer's Answer to Request for Hearing (Form 51); specificity as to possible defenses.

(A) The commission's Employer's Answer to Request for Hearing form, hereinafter referred to as Form 51, must describe with as much specificity as possible the defenses to be relied upon by the defendants. A Form 51 shall not state that "all defenses apply" or other similar language, unless such is actually the case. A Form 51 which does not conform to the requirements of this subsection shall not be considered at a hearing.

(B) Nothing in this section prohibits a commissioner from considering a defense not listed on a Form 51 if:

(1) it is proven to the satisfaction of the commissioner that the defendants had no knowledge of the facts supporting the defense on the date of the completion of the Form 51; and

(2) in the case of represented defendants, the defense omitted on the Form 51 is set forth on the commission's Prehearing Brief form, and such brief is timely filed with the commission and timely served upon the parties.

(C) A Form 51 must be signed by an attorney, verifying that the contents of the form are accurate and true to the best of the attorney's knowledge. If the employer is unrepresented and completes a Form 51, the employer must sign the form, verifying that the contents are accurate and true to the best of the employer's knowledge.

HISTORY: 2007 Act No. 111, Pt I, Section 10, eff July 1, 2007, applicable to injuries that occur on or after that date.

Legislative Services Agency  
<http://www.scstatehouse.gov>

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