

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

WCC File No. 1512220
Appellate Case No. 2017-001947

Rico A. Dorsey, Employee, Appellant,

v.

Allwaste Services, Inc., Employer,
and Bridgefield Casualty Insurance,
c/o Summit Holding, Inc., Carrier, Respondents.

INITIAL REPLY BRIEF

Andrew N. Safran # 4811
ANDREW N. SAFRAN, LLC
P.O. Box 10289
Columbia, SC 29211

Creighton B. Coleman # 6521
COLEMAN & TOLEN, LLC
P.O. Box. 1006
Winnsboro, SC 29180

Blake A. Hewitt # 73674
BLUESTEIN THOMPSON SULLIVAN, LLC
P.O. Box 7965
Columbia, SC 29202
(803) 779-7599
(803) 779-8995 (facsimile)
blake@bluesteinattorneys.com

Attorneys for Appellant

TABLE OF CONTENTS

Table of Authorities	ii
Arguments	1
Conclusion	2

TABLE OF AUTHORITIES

Morgan v. JPS Automotives,
321 S.C. 201, 467 S.E.2d 457 (Ct. App. 1996) 1

Trotter v. Trane Coil Facility,
393 S.C. 637, 714 S.E.2d 289 (2011) 1

Statutes and Other Authorities

S.C. Code Ann. Regs. 67-611 (____) 1

S.C. Code Ann. Regs. 67-613 (____) 1

ARGUMENT

This appeal does not involve the substantial evidence standard. It involves the commission's discretionary power to manage a case and whether the commission abused its discretion in refusing to allow the depositions of two doctors to proceed when those depositions were scheduled to occur within days of the single commissioner's hearing.

The abuse of discretion standard is a deferential standard. The commission has "wide discretion in managing a case" and "[e]very reasonable presumption in favor of a proper exercise of the trial court's discretion will be made." *Trotter v. Trane Coil Facility*, 393 S.C. 637, 650, 714 S.E.2d 289, 295 (2011). Mr. Dorsey believes three things demonstrate an abuse of discretion here.

First, the commission's orders do not make sense. The single commissioner's decision and the appellate panel's decision give different versions of the facts surrounding the deposition requests and articulate illogical reasoning. Both parties *did not* ask the commission to hold the record open for the depositions, as the single commissioner said. The employer changed its mind. As for the panel's decision, the controlling regulation is Reg. 67-613—"Postponment or Adjournment of the Scheduled Hearing"—not Reg. 67-611, which deals with pre-hearing briefs.


Second, there was ample notice of the need for these depositions and there was no sensible reason to for the depositions not to go forward. When there is a timely request to leave the record open for this sort of evidence, leaving the record open "causes no prejudice." *Morgan v. JPS Automotives*, 321 S.C. 201, ___, 467 S.E.2d 457, 459 (Ct. App. 1996). The depositions were set to occur in days. Developing a full record would not harm anyone.

Third, the decision to close the record was not harmless error, as the circumstances indicate the deposition testimony would likely have been material. When the issues being tried are whether an injured worker has reached a medical plateau, whether further care is warranted, and whether other body parts are affected, it only makes sense to hear from the doctors giving the most recent treatment.

CONCLUSION

For the foregoing reasons, the Court should reverse.

Respectfully submitted,

 on behalf and with permission

May 24, 2018

Andrew N. Safran
ANDREW N. SAFRAN, LLC
P.O. Box 10289
Columbia, SC 29211

Creighton B. Coleman
COLEMAN & TOLEN, LLC
P.O. Box. 1006
Winnsboro, SC 29180

Blake A. Hewitt
BLUESTEIN THOMPSON SULLIVAN, LLC
P.O. Box 7965
Columbia, SC 29202
(803) 779-7599
(803) 779-8995 (facsimile)
blake@bluesteinattorneys.com

Attorneys for Appellant

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

WCC File No. 1512220

RECEIVED

MAY 24 2018

SC Court of Appeals

Rico A. Dorsey, Appellant,

v.

Allwaste Services, Inc., Employer,
and Bridgefield Casualty Insurance,
c/o Summit Holding, Inc., Carrier, Respondents.

PROOF OF SERVICE

The undersigned hereby certifies that on the date indicated below she served counsel for the Respondents with a copy of the *Motion for the Court to Accept the Initial Reply Brief out of Time* and the conditionally filed *Initial Reply Brief* by mailing copies of the same by United States Mail with first class postage prepaid to the following address:

Nicolas L. Haigler
PO Box 11449
Columbia, SC 29211


Erin Bridges

May 24, 2018

May 24, 2018

VIA HAND DELIVERY

The Honorable Jenny Kitchings
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RECEIVED

MAY 24 2018

SC Court of Appeals

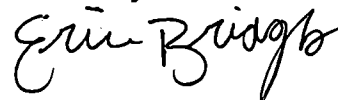
RE: Rico A. Dorsey v. Allwaste Services, Inc.
Appellate Case No.: 2017-001947

Dear Ms. Kitchings:

Please find enclosed for filing the original and seven (7) copies of a *Motion for the Court to Accept the Initial Reply Brief Out of Time*. Also, please find enclosed the conditionally filed original and one (1) copy of the *Initial Reply Brief*. I have also enclosed a proof of service upon counsel for the Respondents and a check in the amount of \$25.00 for filing this motion. Please return the additional filed copies to me via our courier.

Thank you for your attention to this matter. If you have any questions or need any additional information, please do not hesitate to contact me.

Sincerely,



Erin Bridges

Paralegal to Blake A. Hewitt

Bluestein Thompson Sullivan, LLC

/emb

Enclosures

cc: Andrew N. Safran, Esquire
Creighton B. Coleman, Esquire
Nicoias L. Haigler, Esquire