

STATE OF SOUTH CAROLINA
BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO.: 1619767

Veronica Rodriguez,)
)
 Claimant,)
 v.)
)
 Peggy Evers,)
)
 Employer,)
)
 and)
)
 NorGuard Insurance Company,)
)
 Carrier,)
)
 Defendants.)
 _____)

MOTION TO REINSTATE APPEAL
PURSUANT TO SC REG. 67-705

Defendants Peggy Evers and NorGuard Insurance Company hereby file this Motion to Reinstate Defendant's Appeal pursuant to South Carolina Regulation 67-705.

1. The Defendants appealed this matter following a Hearing before the Hearing Commissioner which was held on November 3, 2017. The Order of the Hearing Commissioner was issued on January 5, 2018.

2. The main issue before the Hearing Commissioner was whether the Claimant was an employee or an independent contractor. The Hearing Commissioner determined that the Claimant was an independent contractor but then held that the Claimant was a statutory employee of the Defendant Peggy Evers.

3. The Defendants timely filed a Form 30 application for appellate review asserting numerous grounds for appeal but first and foremost argued that the Hearing Commissioner erred in finding the Claimant was a statutory employee under South Carolina Code section 42-1-400 and

Smith v. Squires Timber Co., 311 S.C. 321, 428 S.E.2d 878 (1993) (noting the circumstances under which one can be an independent contractor and a statutory employee are very narrow).

4. Additionally, the Defendants moved to introduce new evidence for consideration by the Hearing Commissioner under S.C. Regulation 67-707.

5. The South Carolina Workers' Compensation Commission issued a Form 31 Briefing Schedule on February 16, 2018, with the Appellant's Brief due March 18, 2018, and oral argument on April 16, 2018. (March 18, 2018, was a Sunday, thus making the brief due on March 19, 2018).

6. The deadline for the Appellant's Brief was mis-calendared and was not docketed for March 18, 2018. Accordingly, that deadline passed without the Defendants' appeal being filed. Defendants' appeal was administratively dismissed on March 26, 2018.

7. Defendants filed this Motion to Reinstate the appeal on March 27, 2018.

8. Defendants would move to reinstate the appeal. Through a docketing error, the brief was not calendared correctly. However, the appeal was timely perfected and the Commissioner still has the jurisdiction and the discretion to reinstate the appeal.

9. Under South Carolina Regulation 67-705, an appeal may be reinstated for "good cause." By analogy to the Rules of Civil Procedure (and more specifically Rule 55), in determining good cause, a judge should consider: (1) the timing of the motion for relief; (2) whether the defendant has a meritorious defense; and (3) the degree of prejudice to the plaintiff if relief is granted.

10. The timing of the motion for relief weighs in favor of the Defendants, as the Motion to Reinstate was filed within 24 hours of receiving the administrative dismissal and within 8 days of the day the appellant's brief was due.

11. Defendants would submit that they have a meritorious defense both at law and factually—whether the Hearing Commissioner erred in its application of South Carolina Code section 42-1-400 and Smith v. Squires Timber Co., 311 S.C. 321, 428 S.E.2d 878 (1993) or whether the Hearing Commissioner was correct in applying the law set forth in Fortner v. Thomas M. Evans Constr. & Dev., L.L.C., 402 S.C. 421, 429, 741 S.E.2d 538, 543 (Ct. App. 2013). Moreover, the basis of the appeal goes to the whether the South Carolina Workers’ Compensation has jurisdiction over the parties before it.

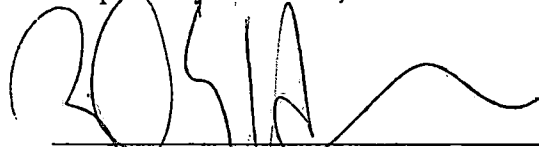
12. Public policy favors the disposition of cases “on their merits” Micronics, Inc. v. South Carolina Department of Revenue, 345 S.C. 506, 511, 548 S.E.2d 223, 226 (Ct. App. 2001). See also Dixon v. Besco Eng'g, 320 S.C. 174, 178, 463 S.E.2d 636, 638 (Ct. App. 1995) (rule addressing setting aside entry of default for “good cause shown” should be Rule 55(c) should be “liberally construed to promote justice and dispose of cases on the merits”). Defendants would contend that the appeal is meritorious and disposing of the case on the merits would serve the ends of justice.

13. Moreover, due to the very short passage of time that has occurred from the time the Appellant’s Brief was due and the time this motion was filed, the Claimant has not suffered any prejudice and would not suffer any prejudice in having this case reinstated and the briefing schedule reinstated.

14. Finally, Defendants have consulted with the attorneys for the Claimant and they do not object to the reinstatement of this appeal.

Based upon the aforementioned, the Defendants would submit that “good cause” exists to reinstate their appeal and would respectfully request the Commission reinstate the appeal.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R. Horner', written over a horizontal line.

Robert E. Horner, Esq.
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Attorney for Defendants

March 27, 2018

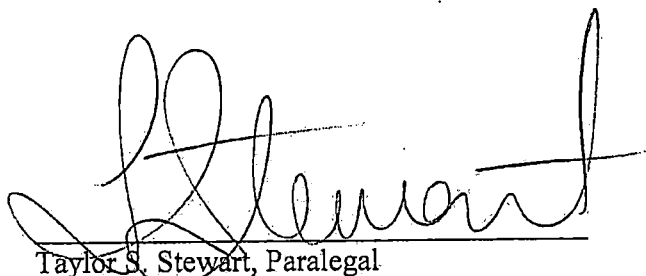
CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Motion to Reinstate Appeal, has been served upon the following parties by placing a copy of the same in the United States mail, first class postage prepaid, addressed to the following as shown below on the 27th day of March, 2018.

S.C. Workers' Compensation Commission
Post Office Box 1715
Columbia, SC 29202

Don C. Gibson, Esquire
Gibson Law Firm
Post Office Box 60669
North Charleston, SC 29419

Stephen Samuels, Esquire
Samuels Law Firm
1320 Richland Street
Columbia, SC 29201

A handwritten signature in black ink, appearing to read "T. Stewart", written over a horizontal line.

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Attorneys for Defendants

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LILY D. WILKERSON (GA & FL)

March 27, 2018

GEORGE D. GALLAGHER (SC), of counsel
ROBERT E. HORNER (SC & NC), of counsel

Via Hand Delivery

S.C. Worker's Compensation Commission
P.O. Box 1715
Columbia, SC 29202-1715

RE: *Veronica Rodriguez v. Peggy Evers*
WCC No.: 1619767
Claim No.: PEWC734403-001
DOA: 12/5/16
Our File No.: 1700-0612

To Whom it May Concern:

Enclosed for filing are the original and three copies of a Motion to Reinstate Appeal in the above case. Also enclosed are the following:

- 1) Proof of Service of the Motion to Reinstate Appeal;
- 2) A filing fee of \$25.00.

I would appreciate very much if you would file the notice and return the copy to our courier. By copy of this letter, I am serving the Notice upon all counsel of record.

Sincerely,



Robert E. Horner

REH/tss

Enclosures

cc: Don Gibson, Esquire
Stephen Samuels, Esquire
Dean Coman

SPEED, SETA, MARTIN, TRIVETT & STUBLEY, LLC
ATTORNEYS AT LAW

P.O. BOX 11669
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1700-0612
The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1015 Sumter Street, Suite 200
Columbia, SC 29201

RECEIVED
JUN 15 2018
SC Court of Appeals