

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE S.C. WORKERS' COMPENSATION COMMISSION

Case No: 2018-000532

RECEIVED

JUN 28 2018

SC Court of Appeals

Misty A. Morris, Claimant,

v.

BB&T Corporation, Employer, and Hartford Accident & Indemnity Co., Carrier.

MOTION TO DISMISS AND/OR MOTION FOR SUBSTITUTION OF PARTIES

Pursuant to Rules 202, 240 and 260, SCACR, The South Carolina Workers' Compensation Commission ("the Commission") moves this Court to Dismiss the appeal for failure to name and serve the proper parties. In the alternative, the Commission moves the Court to remove the Commission as a party to this appeal and substitute or add Misty A. Morris as the adverse party.

The Initial Brief of Appellant, served on the Commission on June 1st, 2018, indicates that the Court of Appeals considers the S.C. Workers' Compensation Commission the Respondent and party to this appeal, and lists the undersigned as counsel of record. It is the position of the Workers' Compensation Commission that it is not a party to this appeal as it was the adjudicator of, and not a party to, the order that is on appeal.

The Workers' Compensation Act gives the Commission the authority to determine all questions arising under the Act. S.C. Code Ann. § 42-3-180 (1976). The purpose of the Commission is to hear parties' disputes and decide them in a summary manner. S.C. Code 42-17-

40 (1976). The Commission is an “agency” authorized by law to determine contested cases in accordance with the Administrative Procedures Act. S.C. Code Ann. § 1-23-310 (1976, as amended).

In the case at bar, the Workers’ Compensation Commission was not a party to the dispute that is under review before the Court of Appeals. Rather, the Commission served as the Administrative Tribunal before whom a dispute was decided between an employee, represented by attorney David Proffitt, and her employer. Following the resolution of that dispute, Mr. Proffitt filed a Petition for Approval of Attorney’s Fees to be decided by the Commission in accordance with § 42-15-90 and S.C. Code Regs. 67-1205.

That petition was adjudicated by a single Commissioner of the Workers’ Compensation Commission in accordance with § 42-17-40, and a Final Decision and Order of the single Commissioner was issued in accordance with § 1-23-350. (EXHIBIT A). Mr. Proffitt attempted to appeal that decision to the Full Commission in accordance with § 42-17-50, however, he failed to follow the procedure prescribed by law for perfecting his appeal, and the appeal was administratively dismissed in accordance with S.C. Code Ann. Regs. 67-705(H)(3). (EXHIBIT B). Following a Petition for Reconsideration of the Administrative Dismissal, the Commission issued an order dismissing his appeal, which constituted the final decision of the administrative tribunal. (EXHIBIT C).

The law does not call upon the Commission to defend its final judicial decision on appeal to the courts. The Commission is the “Administrative Tribunal” as defined in Rule 202(b)(2), SCACR. Appeal from a final decision of the Commission should be taken to the Court of Appeals in the same manner as an appeal from a final decision from a lower court or any other administrative tribunal. The following authorities support this position:

It is plain from this section [Code 1962 § 72-356] that it was the intention of the legislature to provide for the disposition of a claim made to the Industrial Commission by the orderly process of a hearing before a single Commissioner; a review, by the full Commission, of the single Commissioner's award; an appeal from an award by the full Commission to the court of common pleas; and an appeal from that court to the Supreme Court.

Greer v. Greenville County, 245 S.C. 442, 141 S.E.2d 91 (1965).

It was the intent of the legislature to provide that the procedure on appeal should be akin to that of a court, as, for instance, an appeal from an inferior court to the court of common pleas, and an appeal from that court to the Supreme Court. Thus, the intention of the legislature was to provide for the disposition of a claim made to the Industrial Commission by the orderly process of a hearing before a single commissioner, or a deputy appointed by the full Commission; a review, by the full Commission, of the single commissioner's award; an appeal from an award by the full Commission to the court of common pleas; and an appeal from the court of common pleas to the Supreme Court.

Riddle v Fairforest Finishing Co., 198 SC 419, 18 SE2d 341 (1942); *Walsh v. U. S. Rubber Co.* 238 S.C. 411, 120 S.E.2d 685 (1961).

Where it was contended that an appeal from the Commission should be treated the same as if it had come from a lower court it was held that upon consideration of the whole Act and its drastic departures from the common law which it displaced, the answer is patent that the procedure upon appeal must not be permitted to conflict with the novel substantive law which the Act contains.

Schwartz v. Mount Vernon-Woodberry Mills, 206 S.C. 227, 33 S.E.2d 517(1945).

S.C. Code Ann. § 42-17-60 was amended in 2007 to allow appeals from final decisions of the Commission to be taken directly to the Court of Appeals, rather than the Court of Common Pleas. 2007 S.C. Act No. 111, Pt I, § 30, eff July 1, 2007, applicable to injuries that occur on or after that date.

Therefore, the Commission's position is that it is not the appropriate Respondent in the above-referenced appeal. The listing of the Commission in the caption of the case was proposed unilaterally by the appealing attorney, and has not been sanctioned by any order from the jurisdictional tribunal. The Commission's position is that this is not an appropriate designation of parties in accordance with Rule 202, SCACR.

Since this appeal involves findings by the Commission that Mr. Proffitt is not entitled to a portion of the contingency fees he requested be withheld from the injured workers' award in this matter, the adverse party is the Claimant, Misty Morris. There is no relief which can be awarded to Mr. Proffitt from the Commission. Should Mr. Proffitt prevail on the merits of his argument that he attempted to make to the Full Commission, the Commission would lose nothing. Ms. Morris, however, would stand to lose approximately \$11,992.29; money that was allocated to provide her with medical treatment for her injury for the rest of her life.

Given that her attorney, Mr. Proffitt, is attempting to claim excessive attorney's fees to her detriment, there is an inherent conflict of interest between Ms. Morris and her attorney, regardless of whether Mr. Proffitt has counseled her into giving her assent. In this situation, a Guardian ad Litem or independent attorney may be in the best position to represent the interests of this injured worker from whom Mr. Proffitt is trying to take an excessive attorneys' fee.

CONCLUSION

The Commission has never before found itself in the position of being named as a Respondent to an appeal taken from a judicial decision by the Commission. We move that the Appeal be dismissed for failure to designate the proper parties pursuant to Rule 202, and 260 SCACR. In the alternative, we move that the Commission be removed as Respondent, and Misty Morris be added as the adverse party to allow her to appear and defend her settlement against the taking of improper attorneys' fees. Finally, the Commission moves that the time limits for filing Initial Briefs be stayed in accordance with Rule 240(b), SCACR, pending the Court's ruling on this motion.

Respectfully submitted,

THE SOUTH CAROLINA WORKERS' COMPENSATION
COMMISSION



J. Keith Roberts
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(803) 737-5701

Attorney for the South Carolina Workers' Compensation Commission

06/28/18

DATE

EXHIBIT A

**DECISION AND ORDER
OF
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
THE HONORABLE SUSAN S. BARDEN, COMMISSIONER**

SCWCC FILE NO.: 1600715

Misty A. Morris,

Claimant,

v.

BB&T Corporation, d/b/a BB&T Bank and Hartford Accident & Indemnity Co.,

Employer/Carrier,

Hearing held in Richland County,
South Carolina on July 20, 2017

Appearances: Robert David Proffitt, Esquire, Petitioner on his own behalf.

Purpose of Hearing: To resolve the dispute of Attorney Fees and Costs

Decision and Order: By Susan S. Barden, Commissioner

Filed: November 8, 2017

STATEMENT OF THE CASE

This matter came before the undersigned pursuant to a Form 61, Attorney Fee Petition, filed on April 25, 2017. Claimant's Counsel filed the Form 61 to request approval for the award of attorney fees and costs in workers' compensation proceedings under Regulations 67-1204-07 and Rule 1.5(a) of the Code of Professional Conduct. The Form 61 Fee Petition requested approval of an attorney's fee in the amount of \$36,633.33 and costs in the amount of \$5,134.10. Petitioner was informed by Commissioner Barden on May 15, 2017, that the fee petition would not be approved because "compensation" does not include future medicals, so no contingency fee could be claimed against the \$35,976.88 listed in the Settlement Agreement as "future medical costs".

Petitioner resubmitted the fee petition to Commissioner Barden on May 18, 2017, and included a 21-page invoice showing time spent on Claimant's case on an hourly basis, a copy of the Fee Agreement signed by Claimant, and an affidavit from Claimant asking the Commission to approve the requested attorney's fee regardless of whether it was paid on a contingency or hourly basis. The invoice showed that Petitioner's firm had spent 218.7 hours over a sixteen-month period for a total of \$53,900, but Petitioner sought approval of a fee of \$36,633.33.

Petitioner was informed by the Commission on June 8, 2017, that the fee petition would not be approved on either a contingency or hourly basis unless Petitioner submitted a fee petition which did not include any fee on the amount of \$35,976.88 allocated to future medical costs. Petitioner requested a hearing on the matter of the fee petition.

The case was set for a Hearing before the undersigned on July 20, 2017 to resolve the dispute of attorney fees.

FINDINGS OF FACT

1. The parties entered into a Settlement Agreement and Release Order Approving Settlement on March 15, 2017.
2. The Agreement provided that Defendants would pay to the Claimant the sum of One Hundred Nine Thousand and Nine Hundred Dollars (\$109,900.00). The settlement

after deducting attorney's fees and costs of \$36,633.33 and \$5,134.10, respectively, past out-of-pocket medical costs of at least \$99,876.38 and future medical costs of \$35,976.88, represents future compensation in the amount of \$22,279.31 at a weekly rate of \$757.72, beginning March 15, 2017, and continuing through the Claimant's anticipated lifetime of 42.94 years. Therefore, Employee-Claimant will receive \$9.98 (Nine Dollars and Ninety-Eight Cents) per week in compensation benefits beginning March 15, 2017, for the duration of the Employee-Claimant's lifetime ($\$22,279.31 / 2,232.88 \text{ weeks} = \9.98 per week).

3. Claimant's Counsel filed a Form 61 on April 25, 2017, requesting approval of an attorney's fee in the amount of \$36,633.33 and costs in the amount of \$5,134.10
4. On May 15, 2017, the undersigned informed Petitioner that the fee petition would not be approved because compensation does not include future medicals, so no 1/3 fee is allowable on the \$35,976.88.
5. On May 18, 2017, Petitioner resubmitted the fee petition to Commissioner Barden and included a 21-page invoice showing time spent on Claimant's case on an hourly basis.
6. On June 8, 2017, the undersigned informed Petitioner Claimant Petitioner that the fee petition would not be approved on either a contingency or hourly basis unless Petitioner submitted a fee petition which did not include any fee on the amount of \$35,976.88 purportedly allocated to future medical costs.
7. I find in my discretion that the Petition for Attorney's fees and costs is granted in part and denied in part. The payment of Petitioner's attorney's fees in the amount of \$24,641.04 and reimbursement of costs of \$5,134.10 is hereby approved. By this order, the Commission approves payment of a one-third contingent attorney's fee based on a settlement of \$73,923.12, which does not include \$35,976.88 which was allocated to future medical expenses pursuant to the Utica-Mohawk provision in the approved Settlement Agreement. The approval of an attorney's fee which includes the amount allocated to future medical expenses is denied.
8. I find as a fact that "future medical treatment" is not money allowance payable as described in § 42-1-100, and that any funds allocated for the payment of medical treatment may not be reduced to collect attorneys' fees.
9. Further, the requested fee in this particular case is unreasonable under Rule 1.5 of the South Carolina Rules of Professional Conduct.

10. The Commission requires that requested attorneys' fees comply with the South Carolina Supreme Court Disciplinary Rules on determining a reasonable fee. *See* S.C. Code Ann. Regs. 67-1205(A) and (B).
11. While I acknowledge that Counsel expended time and labor in representing his client, I find based on the totality of the evidence that \$24,641.04 in attorneys' fees and reimbursement costs of \$5,134.10 adequately compensates him for the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly. *See* RPC, Rule 1.5(a)(1), Rule 407, SCACR.
12. I find as a fact that no evidence was submitted to indicate that Counsel's representation of Claimant in this matter served to substantially preclude other employment by Counsel. *See* RPC, Rule 1.5(a)(2), Rule 407, SCACR.
13. I find as a fact that Counsel's requested fee is not the fee customarily charged in this locality for similar legal services. *Id.* at Rule 1.5(a)(3). Specifically, it is not customary or proper in cases before the Workers' Compensation Commission to charge an injured worker a contingency fee against benefits provided to an injured worker for medical treatment, including funds specifically designated for future medical treatment.
14. I find as a fact that the fee of \$24,641.04 and reimbursement costs of \$5,134.10 more than adequately remunerates Counsel in relation to the amount involved and the favorable results obtained, as it is the maximum amount of a contingency fee permitted by law. *See id.* at Rule 1.5(a)(4).
15. There is no compelling evidence in this case that Claimant or the circumstances imposed on Counsel extraordinary time limitations not present in any complex workers' compensation claim. *See id.* at Rule 1.5(a)(5).
16. I find as a fact that the fee of \$24,641.04 and reimbursement costs of \$5,134.10 more than adequately remunerates Counsel in relation to the nature and length of the professional relationship with the client, as it is the maximum amount of a contingency fee permitted by law. *See id.* at Rule 1.5(a)(6).
17. I find as a fact that the fee of \$24,641.04 and reimbursement costs of \$5,134.10 more than adequately remunerates Counsel in relation to his experience, reputation, and ability, as it is the maximum amount of a contingency fee permitted by law. *See id.* at Rule 1.5(a)(7).

18. I also weigh against Counsel's request the fact that the requested fee is for a contingency fee to be taken off of funds specifically described as being provided for Claimant's medical treatment. The agreement as written indicates that the portion of the funds in question represent future medical costs. The Commission has never allowed an attorney to claim a contingency fee against funds allocated for medical costs. *See id.* at Rule 1.5(a)(8).
19. Petitioner shall hold the remaining \$11,992.29 in his firm's trust account until this matter is resolved by the Commission or on appeal.
20. It is important to note that this decision does not leave Petitioner bereft of recompense for his labor, as I am awarding him a fee of \$24,641.04 and reimbursement costs of \$5,134.10.

CONCLUSIONS OF LAW

1. Pursuant to 42-1-100 "compensation" is the money allowance payable to an employee or to his dependents.
2. Pursuant to Regulation 67-1205(C) an attorney may charge up to, but not more than, 33.3% of the total amount of compensation, except in ... situations where the attorney shall set the fee as instructed." S.C. Code Regs. 67-1205. As used in 67-1205(C), compensation does not include future medicals.
3. The exceptions set forth in 67-1205(C)(1-7) do not apply in this case.
4. The Act requires that "as used in this Title, unless the context otherwise requires, the terms dealt with in §§ 42-1-30 to 42-1-190 shall include the categories or shall have the meanings severally ascribed to them in said sections." S.C. Code Ann. § 42-1-20.
5. The first sentence of R.67-1205(C) states that "[a]n attorney may charge up to, but not more than, 33.3% of the *total amount of compensation*, except in the following situations, where the attorney shall set the fee as instructed." R.67-1205(C) (Emphasis added).
6. Section 42-1-560(b), in its second sentence, also uses the phrase "total amount of compensation".

In such cases the carrier shall have a lien on the proceeds of any recovery from a third party . . . to the extent of *the total amount of compensation*, including medical and other expenses, paid, or to be paid by such carrier,

less reasonable and necessary expenses, including attorney fees, incurred in effecting the recovery, and to the extent the recovery shall be deemed to be for the benefit of the carrier.

S.C. Code Ann. § 42-1-560(b).

7. Although Counsel cherry picks language from the Court of Appeals opinion in *Breeden v. TCW, Inc./Tennessee Express* in an effort to support his argument that future medical expenses are included in the definition of 'compensation' as used within § 42-1-100, a broader reading of the South Carolina Supreme Court's decision in *Breeden* undermines Counsel's position and illustrates that the court strictly construes § 42-1-560 and describes it specifically as "a subrogation statute." *Breeden v. TCW, Inc./Tennessee Express*, 355 S.C. 112, 584 S.E.2d 379, 382 (2003)
8. The chief purpose for the statute is to explain the rights and remedies against third parties so that if applicable, "an injured employee may bring an action against a third-party tortfeasor in order to recover from the ultimate wrongdoer under § 42-1-560(b)." *Id.*
9. Further, § 42-1-560(b) states that in actions against third parties, "the carrier shall have a *lien* on the proceeds of any recovery from the third party. . . less the reasonable and necessary expenses, including attorney fees, incurred in effecting the recovery, and to the extent the recovery shall be deemed to be for the benefit of the carrier." (Emphasis added). S.C. Code Ann. § 42-1-560.
10. The Supreme Court clarifies in *Breeden* that § 42-1-560 defines "the carrier's lien [a]s a separate pot of money that is not included in the same pool of money creating the fund under subsection (g)" within the statute. *Breeden*, 584 S.E.2d at 383.
11. The court reasoned therefore that, "the statute clearly separates the carrier's lien from the fund for future reimbursement." *Id.*, at 384.
12. Section 42-1-560 generally is neither applicable nor instructive of the plain, ordinary meaning of the word 'compensation' as used within § 42-1-100 outside of claims involving third parties. There is no third party to the settlement in question, so the application of § 42-1-560 is inapposite to this case as it relates to the January 2014 settlement specifically.

13. When the phrase “total amount of compensation” is read in § 42-1-560(b), the context of the statute requires it to be read in a different manner than it is read in R.67-1205(C). This is because in § 42-1-560(b) “total amount of compensation” is modified by the clauses immediately following it in the same sentence, specifically the clause “including medical and other expenses”. If “compensation” already included medical expenses in its definition, there would be no need to include the modifying clause “including medical and other expenses” immediately after it.
14. The context of § 42-1-560(b) requires us to expand the definition of “compensation” beyond what is provided in § 42-1-100, to include medical and other expenses. This is consistent with § 42-1-20. This is also consistent with the Legislature’s overall scheme in drafting § 42-1-560. For example, in subsection (a) the statute provides “the respective rights and interests . . . of the employer or person, association, corporation or carrier liable for the payment of compensation and other benefits under this title, *herein after called ‘carrier’ . . .*” S.C. Code Ann. § 42-1-560(a). The drafters of § 42-1-560 wrote the context of the statute to require a broader definition of the word “carrier” than is provided for under § 42-1-60.
15. The context of § 42-1-560 requires a different meaning to be placed on the word “compensation” as it is used in that statute than is provided for in § 42-1-100.
16. Likewise, given the lack of any modifying clauses, the context of R.67-1205 does not require the word “compensation” to mean anything other than what is provided for in § 42-1-100.
17. Counsel’s reliance on the North Carolina Court of Appeals opinion in *Palmer v. Jackson* is misguided. In *Palmer I* the North Carolina Court of Appeals clearly found that past medical expenses required to be paid to prior medical providers could not be reduced for attorneys’ fees. *Palmer v. Jackson*, 579 S.E.2d 901 (NC Ct. App. 2003), *discretionary review improvidently granted*, 595 S.E.2d 145 (2004). Further, no “special circumstances” as described in *Palmer* are present in the case at bar. The actions taken on remand in *Palmer II* are hardly informative to the case at bar, as *Palmer II* is an unpublished opinion from a foreign court that involves different facts than are involved in the instant case. *See Palmer v.*

Jackson, Op. No. COA05-1067 (NC App. Filed May 16, 2006)(unpublished opinion).

18. Counsel goes on to cite from myriad opinions from courts around the country that he insists support his position, however, Counsel has not brought to my attention any cases that involve interpretation of a regulation with language similar to Reg. 67-1205. In fact, most of the States whose opinions Counsel cites as favorable to his position in reality have far greater limitations on an attorney's ability to claim a contingency fee than the generous rules provided by South Carolina. *See* New Hampshire Administrative Rules, Lab 207.01(a)(1). (Attorneys' contingency fees limited to 20% of the amount of compensation); *See* Fla. Stat. § 440.34 (Attorneys' contingency fees limited 20% of the first \$5,000, 15% of the next \$5,000, and 10% of the remainder); *See* N.C. Gen. Stat. § 97-90 (Attorneys' contingency fees normally limited to 25% of the total amount of compensation); § 39-71-613, Montana Code Ann, Rule 24.29.3802 (Attorneys' contingency fees limited to 20% of the amount of compensation); Tenn. Code Ann. § 50-6-226 (attorneys' contingency fee limited to 20% of the amount of recovery). New Mexico Statutes § 52-1-54(I) (Attorneys' fees shall not exceed \$22,500.00); PA Code § 131.55 (up to 20% of settlement or award).
19. Counsel is not entitled to a fee on a quantum meruit basis under Reg. 67-1205. The Regulation provides "When *unusual circumstances exist*, the attorney may attach to the Form 61 a short memorandum supporting approval of a fee calculated on an hourly rate or by quantum meruit." S.C. Code Ann. Regs. 67-1205(C) (2014 Supp.) (Emphasis added). The record is devoid of any evidence indicating unusual circumstances exist. Counsel's allegation that he had to work a lot of hours on this particular case does not meet the standard of "unusual circumstances".
20. Requested attorneys' fees must comply with the South Carolina Supreme Court Disciplinary Rules on determining a reasonable fee. *See* Rule 1.5(A), RPC, Rule 407, SCACR; *See also* R.67-1205(A) and (B).
21. "The decision to award or deny attorneys' fees under a state statute will not be disturbed on appeal absent an abuse of discretion." *Kiriakides v. Sch. Dist. of Greenville Cnty.*, 382 S.C. 8, 20, 675 S.E.2d 439,445 (2009). "Similarly, the

specific amount of attorneys' fees awarded pursuant to a statute authorizing reasonable attorneys' fees is left to the discretion of the trial judge and will not be disturbed absent an abuse of discretion." *Id.*

ORDER

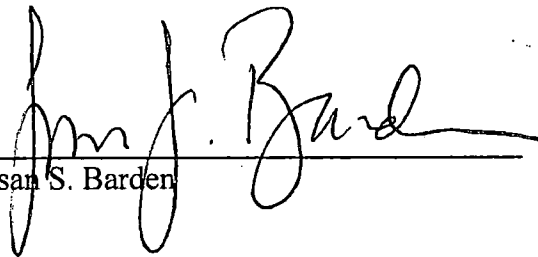
IT IS, THEREFORE, ORDERED that Petitioner's Petition for attorney's fees and costs is granted in part and denied in part;

IT IS ORDERED that the payment of Petitioner's attorney's fees in the amount of \$24,641.04 and reimbursement costs of \$5,134.10 is granted;

IT IS ORDERED that the Commission approves payment of a one-third contingent attorney's fee based on a settlement of \$73,923.12, which does not include \$35,976.88 which was allocated to future medical expenses;

IT IS ORDERED that Petitioner shall hold the remaining \$11,992.29 in his firm's trust account until this matter is resolved by the Commission or on appeal.

IT IS SO ORDERED!


Susan S. Barden

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

By Barbara Skarbek on November 8, 2017

EXHIBIT B

South Carolina Workers' Compensation Commission

1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
(803) 737-5723



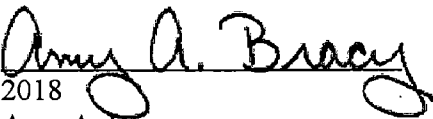
WCC File #: 1600715

Date of Injury: 01/18/2016

ADMINISTRATIVE ORDER

Misty Morris v. BB&T Corp d/b/a BB&T Bank
WCC File No: 1600715

The Request for Commission Review in the above captioned case is dismissed. The appellant brief was not timely filed pursuant to R.67-705 H(3).


2018

Amy A. Bracy
Judicial Director

Date: January 26,

CERTIFICATE OF SERVICE

I hereby certify on January 26, 2018, I served this document on the parties listed below by electronic mail or depositing a copy hereof, postage prepaid, in the United States mail and addressed as follows:

David Proffitt
Proffitt & Cox, LLP
140 Wildewood Park Drive, Suite A
COLUMBIA, SC 29223

BB&T Corp d/b/a BB&T Bank
2500 Charleston Hwy
WEST COLUMBIA, SC 29172

Hartford Accident & Indemnity Co
SE Workers' Comp. Claim Center
PO Box 14473
Lexington, KY 40512

By: Eugenia C. Hollmon, Judicial Department

EXHIBIT C

**SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
JUDICIAL CONFERENCE DECISION AND ORDER**

**Misty A. Morris v BB&T Corp dba BB&T Bank
SCWCC: 1600715
Commissioner: Barden**

This matter was heard before the South Carolina Workers' Compensation Full Commission in Judicial Conference **Motion for Rehearing**. The Commissioners considered the matter and ordered the matter handled in the following manner:

IT IS, THEREFORE, ORDERED the pending appeal of the Administrative Order of the Commission is hereby;
 Dismissed as Interlocutory. Set for Oral Argument.

IT IS, THEREFORE, ORDERED the pending motion be, and hereby is;
 Granted. X Denied. Dismissed Preserved for hearing

BEFORE THE;
 Hearing Comm. Jurisdictional Comm. Full Commission.


IT IS, THEREFORE, ORDERED this matter be, and hereby is; remanded to take such action and enter an Order consistent with the Court's directive.

 Remand to Panel as indicated below.
 Barden James Taylor
 Beck Campbell Wilkerson
 McCaskill

 Remand for Order consistent with the Order of the Court.
 Remand to the Hearing Commissioner.
 Remand to the Jurisdictional Commissioner.
 Other: _____

 Remand: Panel Oral Argument. En Banc Oral Argument.

AND IT IS SO ORDERED.



**T. Scott Beck, Chair
For the Commission**

Columbia, South Carolina

 3/19 2018

CONCURRING:	NOT PARTICIPATING:	DISSENTING:
Commissioner Susan S. Barden	<u> X </u>	_____
Commissioner Melody James	_____	_____
Commissioner Aisha Taylor	_____	_____
Commissioner Avery Wilkerson	_____	_____
Commissioner Michael Campbell	_____	_____
Commissioner Gene McCaskill	_____	_____

CERTIFICATE OF SERVICE
THIS IS TO CERTIFY THE UNDERSIGNED HAS THIS DATE SERVED THIS ORDER IN THE ABOVE ENTITLED ACTION UPON ALL PARTIES ELECTRONICALLY OR BY DEPOSITING A COPYHEREOF, POSTAGE PAID, IN THE UNITED STATES MAIL.

This 19 day of March , 2018.
By: Valerie D. Deller
SCWCC Judicial Department

PROFFITT & COX

Attorneys at Law

PROFFITT & COX, LLP
140 WILDEWOOD PARK DRIVE, SUITE A
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February 22, 2018

Eugenia Hollmon and Valerie Deller
S.C. Workers' Compensation Commission
ATTN: JUDICIAL DEPARTMENT – APPEALS
P.O. Box 1715
Columbia, SC 29202-1715

RE: Misty A. Morris v. BB&T Corporation d/b/a BB&T Bank and Hartford Accident &
Indemnity Co.
WCC File No. 1600715
PC File No. 1464.01

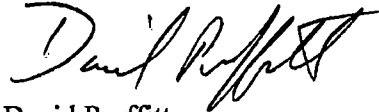
Dear Ms. Hollmon and Ms. Deller:

Please find enclosed for filing a Motion for Rehearing with regard to the Full Commission's denial of my Motion to Reinstate an Appeal, which I received on February 20, 2018.

Please file the original motion and return a date-stamped copy to me in the enclosed envelope. A check for the \$25.00 filing fee is enclosed.

With kindest personal regards, I remain
Sincerely yours,

PROFFITT & COX, LLP



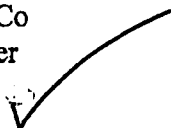
David Proffitt



RDP/nif
Enclosures

cc:
BB&T Corp d/b/a BB&T Bank
2500 Charleston Hwy
West Columbia, SC 29172

Hartford Accident & Indemnity Co
SE Workers' Comp. Claim Center
PO Box 14473
Lexington, KY 40512



SCWCC
FEB 26 2018
JUDICIAL

STATE OF SOUTH CAROLINA

WORKERS' COMPENSATION COMMISSION

COUNTY OF LEXINGTON

WCC File No. 1600715

IN RE: Attorney's Fee Petition of David Proffitt, Appellant,

In the Matter of Misty A. Morris, Claimant,

v.

BB&T Corporation, d/b/a BB&T Bank and Hartford Accident & Indemnity Co.

Employer/Carrier.

APPELLANT'S MOTION FOR REHEARING

Appellant David Proffitt submits his motion for rehearing to the Full Commission.

PROCEDURAL POSTURE

Appellant on November 15, 2017, timely filed a Form 30 Request for Commission Review of Commissioner Susan S. Barden's order denying in part his petition for attorney's fees. The Commission on December 15, 2017, issued a Form 31 Briefing Schedule and Notice of Appellate Hearing. Appellant's brief was due to be filed on January 16, 2018, and the hearing was scheduled for February 20, 2018.¹

Appellant received by email a letter from the Commission on January 26, 2018, stating that the appeal had been administratively dismissed because Appellant's brief was not timely filed pursuant to Reg. 67-705(H)(3). Pursuant to Reg. 67-705(H)(4), Appellant moved on January 29, 2018, to reinstate the appeal, and his motion was filed on February 1, 2018.

¹ The Form 31 stated the brief was due on January 14, 2018, but January 14 was a Sunday and January 15 was a holiday.

Pursuant to S.C. Code Ann. § 1-23-380(5), the decision of the Commission may be reversed or modified “if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions or decisions are:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by an abuse of discretion or clearly unwarranted exercise of discretion.”

MOTION

Appellant moves for rehearing before the Full Commission on the following grounds:²

- I. The Full Commission’s denial of Appellant’s motion to reinstate the appeal after it was administratively dismissed and failure to consider the appeal on the merits is arbitrary, capricious and constitutes an abuse of discretion, where Appellant has shown good cause to reinstate the appeal after mistakenly calendaring the wrong due date for the brief, there is no opposing party which could have been prejudiced by granting the motion, and Appellant was ready,**

² See Rhame v. Charleston County School Dist., 412 S.C. 273, 772 S.E.2d 159 (2015) (holding that party may file motion for rehearing with Full Commission and the motion stays the deadline for serving notice of appeal with Court of Appeals for thirty days from receipt of decision on the motion for rehearing).

The Commission regulations require that “[a]ll briefs must be filed at least five days before the scheduled date of review.” 25A S.C. Code Ann. Reg. 67-705(H)(1). Appellant was ready, willing and able to file his brief 22 days before the scheduled date of review.

“An appeal which is administratively dismissed by the Judicial Department may be reinstated for good cause shown to the Commission.” 25A S.C. Code Ann. Reg. 67-705(H)(4). See also Matute v. Palmetto Baptist Hosp., 391 S.C. 291, 705 S.E.2d 472, 474-75 (Ct. App. 2011) (affirming Commission’s decision to reinstate employer’s appeal for good cause after it was administratively dismissed because Form 30 was filed after the 14-day deadline to appeal single commissioner’s order, where record showed order had been timely served on employer but employer asserted it did not receive the order until it inquired to the single commissioner a month later).

Appellant submits that he has shown good cause to reinstate the appeal. Appellant candidly admitted that he calendared the wrong due date for the brief, which resulted in the missing of a non-jurisdictional deadline and a slight delay that prejudiced no one. Appellant was ready, willing and able to immediately submit his brief to the Commission 13 days after the original due date of January 16, 2018, and 22 days before the scheduled hearing date of February 20, 2018. See attached affidavit of Appellant, stating same.

There is no opposing party in this matter which could have been prejudiced by granting the motion because, as counsel for Employer/Carrier has informed the Commission, Employer/Carrier has no opinion or role and has not appeared in this attorney’s fee matter.

Appellant was ready to file his brief, as shown in the proposed brief submitted to the Commission with his motion to reinstate the appeal. Appellant was ready and willing to submit his brief, perfect the appeal and proceed to the hearing on February 20. Conversely, Appellant had

no objection to continuing a hearing on the appeal until a later date if the Commission deemed it necessary.³

The Full Commission in its form order denying the motion gave absolutely no reason for the denial. The Commission made no findings of fact and stated no conclusions of law. The Commission offered Appellant no opportunity to be heard before denying the motion, as Appellant was informed the Commission would simply consider the written motion at a judicial conference.

“An abuse of discretion occurs when the judge’s ruling is based upon an error of law or, when based upon factual conclusions, is without evidentiary support.” Fontaine v. Peitz, 291 S.C. 536, 354 S.E.2d 565 (1987). The Commission’s ruling in this instance is based on an error of law because the law certainly cannot condone the outright dismissal of an appeal when a party is 13 days late in filing a brief.

The Commission’s decision also is without evidentiary support. If it is the Commission’s position that a single, non-jurisdictional calendaring mistake by counsel, which results in a single, non-jurisdictional missed deadline, is a “death sentence” for a case or an appeal, Appellant respectfully submits that such a position must be deemed arbitrary, capricious and an abuse of discretion. Such a position would only be tenable in a world where every lawyer was perfect and unerring, every claimant an angel, every employer and insurer a demi-god, and every

³ Appellant is at a loss to understand the Commission’s ruling or apparent displeasure at the missing of a non-jurisdictional deadline and a mere 13-day delay, given the fact that a hearing by the single commissioner on Appellant’s petition was held on July 20, 2017, and the order denying the petition in part was filed 3½ months later on November 8, 2017. Appellant is *not, repeat, not* in any way criticizing the Commission for the length of time it took to obtain a ruling because Appellant is aware of the Commission’s heavy workload. However, the slow and steady pace of the Commission’s work does indicate that a slight delay in the filing of a brief should not completely derail an appeal from proceeding to a decision on the merits.

commissioner a saint. Such a world does not exist, and Appellant is the first to admit he is far from perfect or unerring.

Appellant asks that the Commission reconsider its ruling, grant his motion to reinstate the appeal and consider the appeal on the merits.

II. The Full Commission's denial of Appellant's motion to reinstate the appeal after it was administratively dismissed and failure to consider the appeal on the merits violates Appellant's constitutional and statutory right to due process, where Appellant has shown good cause to reinstate the appeal after mistakenly calendaring the wrong due date for the brief, there is no opposing party which could have been prejudiced by granting the motion, and Appellant was ready, willing and able to immediately submit his brief to the Commission 13 days after the original due date and 22 days before the scheduled hearing date.

Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty or property interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment of the United States Constitution. Mathews v. Eldridge, 424 U.S. 319, 332 (1976). "The privileges and immunities of citizens of this State and of the United States under this Constitution shall not be abridged, nor shall any person be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws." S.C. Const., art. I, § 3.

The fundamental requirements of due process include notice, an opportunity to be heard in a meaningful way, and judicial review. Stono River Env'tl. Protection Ass'n v. S.C. Dep't of Health and Env'tl. Control, 305 S.C. 90, 94, 406 S.E.2d 340, 342 (1991). "No person shall be finally

bound by a judicial or quasi-judicial decision of an administrative agency affecting private rights except on due notice and an opportunity to be heard; nor shall he be subject to the same person for both prosecution and adjudication; nor shall he be deprived of liberty or property unless by a mode of procedure prescribed by the General Assembly, and he shall have in all such instances the right to judicial review.” S.C. Const. art. 1, § 22.

The requirements of procedural due process, usually deemed to apply in a contested case or hearing which affects an individual’s property or liberty interest, generally include adequate notice, the opportunity to be heard at a meaningful time and in a meaningful way, the right to introduce evidence, the right to confront and cross-examine witnesses whose testimony is used to establish facts, and the right to meaningful judicial review. In re Vora, 354 S.C. 590, 595, 582 S.E.2d 413, 416 (2003); S.C. Dept. of Soc. Servs. v. Wilson, 352 S.C. 445, 452-53, 574 S.E.2d 730, 733-34 (2002) (quoting Morrissey v. Brewer, 408 U.S. 471, 481, 92 S. Ct. 2593, 2600, 33 L.Ed.2d 484, 494 (1972)); Cameron Barkley Co. v. S.C. Procurement Review Panel, 317 S.C. 437, 440, 454 S.E.2d 892, 894 (1995).

Due process does not require a trial-type hearing in every conceivable case of government impairment of a private interest. First Fed. Sav. & Loan Ass’n of Walterboro v. Bd. of Bank Control, 263 S.C. 59, 65, 207 S.E.2d 801, 804 (1974) (quoting Cafeteria and Restaurant Workers Union v. McElroy, 367 U.S. 886, 894 (1961)). Rather, due process is flexible and calls for such procedural protections as the particular situation demands. S.C. Dep’t of Soc. Servs. v. Wilson, 352 S.C. 445, 452, 574 S.E.2d 730, 733 (2002); In re Vora, 354 S.C. at 595, 582 S.E.2d at 416. The requirements in a particular case depend on the importance of the interest involved and the circumstances under which the deprivation may occur. S.C. Dept of Soc. Servs. v. Beeks, 325 S.C. 243, 246, 481 S.E.2d 703, 705 (1997).

In this case, the Commission's denial of the motion to reinstate and failure to consider the appeal on the merits constitutes a violation of procedural due process. Appellant has a property interest in the attorney's fee charged in this case. Appellant has been denied the right to adequate notice, the opportunity to be heard at a meaningful time and in a meaningful way, the right to meaningful review by the Commission and the right to meaningful judicial review.

Moreover, the Commission's decision has denied Appellant his right to substantive due process.

No person shall be deprived of life, liberty, or property without due process of law. U.S. Const. amend. XIV, 1; S.C. Const. art. I, 3. In order to prove a denial of substantive due process, a party must show that he was arbitrarily and capriciously deprived of a cognizable property interest rooted in state law. Sunset Cay, LLC v. City of Folly Beach, 357 S.C. 414, 430, 593 S.E.2d 462 (2004); Worsley Companies, Inc. v. Town of Mt. Pleasant, 339 S.C. 51, 528 S.E.2d 657 (2000).

"The purpose of the substantive due process clause is to prohibit government from engaging in arbitrary or wrongful acts regardless of the fairness of the procedures used to implement them." In re Treatment and Care of Luckabaugh, 351 S.C. 122, 140, 568 S.E.2d 338, 347 (2002) (internal quotes omitted).

"The right to hold specific employment and the right to follow a chosen profession free from unreasonable governmental interference come within the liberty and property interests protected by the Due Process Clause [of the Fourteenth Amendment]. The liberty interest at stake is the individual's freedom to practice his or her chosen profession; the property interest is the specific employment." Brown v. S.C. State Bd. of Educ., 301 S.C. 326, 329, 391 S.E.2d 866, 867 (1990) (citing Greene v. McElroy, 360 U.S. 474, 79 S.Ct. 1400, 3 L.Ed.2d 1377 (1959)); Baird v.

Charleston County, 333 S.C. 519, 537, 511 S.E.2d 69, 79 (1999) (recognizing same principle); Ezell v. Ritholz, 188 S.C. 39, 46-49, 198 S.E. 419, 422-23 (1938) (discussing same principle). “It cannot be doubted that a man’s trade or profession is his property.” Byrne’s Adminstrs. v. Stewart’s Adminstrs., 3 S.C. Eq. (3 Des. Eq.) 466, 479 (1812); see also Sloan v. S.C. Bd. of Physical Therapy Examiners, 370 S.C. 452, 636 S.E.2d 598, 611-12 (2006), overruled other grounds by Joseph v. S.C. Dept. of Labor, Licensing & Regulation, 417 S.C. 436, 790 S.E.2d 763 (2016) (stating “[t]here is no reasonable doubt that the rights of those who have been duly licensed to practice medicine or other professions are property rights of value which are entitled to protection”) (citing Dantzler v. Callison, 230 S.C. 75, 92, 94 S.E.2d 177, 186 (1956)). A duly licensed attorney’s right to practice law and make his living doing so, of course, also is a property right of value which is entitled to protection.

In this case, Appellant has a property interest in the attorney’s fee charged in this case. The Commission’s denial of the motion to reinstate and failure to consider the appeal on the merits constitutes a violation of substantive due process and an unlawful deprivation of Appellant’s property interest.

Appellant asks that the Commission reconsider its ruling, grant his motion to reinstate the appeal and consider the appeal on the merits.

III. The Full Commission’s denial of Appellant’s motion to reinstate the appeal after it was administratively dismissed and failure to consider the appeal in the merits was made upon unlawful procedure and is clearly erroneous in view of the reliable, probative and substantial evidence on the whole record, where Appellant has shown good cause to reinstate the appeal after mistakenly calendaring the wrong due date for the brief, there is no opposing party which

could have been prejudiced by granting the motion, and Appellant was ready, willing and able to immediately submit his brief to the Commission 13 days after the original due date and 22 days before the scheduled hearing date.

As previously stated, Appellant candidly admitted that he calendared the wrong due date for the brief, which resulted in a slight delay that prejudiced no one. Appellant was ready, willing and able to immediately submit his brief to the Commission 13 days after the original due date of January 16, 2018, and 22 days before the scheduled hearing date of February 20, 2018.

There is no opposing party in this matter which could have been prejudiced by granting the motion because, as counsel for Employer/Carrier has informed the Commission, Employer/Carrier has no opinion or role and has not appeared in this attorney's fee matter.

Appellant was ready to file his brief, as shown in the proposed brief submitted to the Commission with his motion to reinstate the appeal. Appellant was ready and willing to submit his brief, perfect the appeal and proceed to the hearing on February 20. Conversely, Appellant had no objection to continuing a hearing on the appeal until a later date if the Commission deemed it necessary.

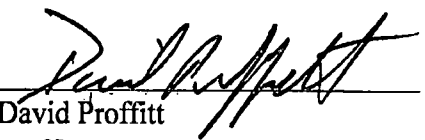
Given these factual circumstances, the Commission's denial of the motion to reinstate and failure to consider the appeal on the merits was made upon unlawful procedure and is clearly erroneous in view of the reliable, probative and substantial evidence on the whole record.

Appellant asks that the Commission reconsider its ruling, grant his motion to reinstate the appeal and consider the appeal on the merits.

CONCLUSION

For all the foregoing reasons, Appellant asks that the Commission reconsider its ruling, grant his motion to reinstate the appeal and consider the appeal on the merits.

Respectfully submitted,



David Proffitt
Proffitt & Cox, LLP
140 Wildewood Park Drive, Suite A
Columbia, SC 29223
(803) 834-7097
FAX: 1-888-711-1057
dproffitt@proffittcox.com

February 22, 2018

STATE OF SOUTH CAROLINA

WORKERS' COMPENSATION COMMISSION

COUNTY OF LEXINGTON

WCC File No. 1600715

IN RE: Attorney's Fee Petition of David Proffitt, Appellant,

In the Matter of Misty A. Morris,
Claimant,

v.

BB&T Corporation, d/b/a BB&T Bank
and Hartford Accident & Indemnity Co.

Employer/Carrier.

CERTIFICATE OF SERVICE

I, the undersigned lawyer or employee in the offices of Proffitt & Cox, LLP, attorneys for Claimant, do hereby certify that I have served the counsel or parties specified below in this action with a copy of the specified pleadings by causing a copy of the same to be X mailed by United States Mail, postage prepaid; ___ e-mailed; ___ faxed; ___ hand-delivered, to the following address:

Pleading: Appellant's Motion for Rehearing

Counsel / Parties Served: Eugenia Hollmon and Valerie Deller
S.C. Workers' Compensation Commission
ATTN: JUDICIAL DEPARTMENT - APPEALS
P.O. Box 1715
Columbia, SC 29202-1715

BB&T Corp d/b/a BB&T Bank
2500 Charleston Hwy
West Columbia, SC 29172

Hartford Accident & Indemnity Co
SE Workers' Comp. Claim Center
PO Box 14473
Lexington, KY 40512


David Proffitt

February 22, 2018

STATE OF SOUTH CAROLINA

WORKERS' COMPENSATION COMMISSION

COUNTY OF LEXINGTON

WCC File No. 1600715

IN RE: Attorney Fee Petition of David Proffitt, Petitioner,

In the Matter of Misty A. Morris,
Claimant,

v.

BB&T Corporation, d/b/a BB&T Bank
and Hartford Accident & Indemnity Co.

Employer/Carrier.



AFFIDAVIT

I, the undersigned, David Proffitt, being duly sworn, state under oath as follows:

1. I am the attorney for Claimant Misty A. Morris in this case. I am over the age of eighteen years.
2. I have personal knowledge of the facts set forth in this affidavit to the extent specified herein and, if called as a witness, I could competently testify to these facts.
3. On November 15, 2017, timely filed a Form 30 Request for Commission Review of Commissioner Susan S. Barden's order denying in part my petition for attorney's fees.
4. The Commission on December 15, 2017, issued a Form 31 Briefing Schedule and Notice of Appellate Hearing. Appellant's brief was due to be filed on January 16, 2018, and the hearing was scheduled for February 20, 2018.¹

¹ The Form 31 stated the brief was due on January 14, 2018, but January 14 was a Sunday and January 15 was a holiday.

5. On January 26, 2018, I received by email a letter from the Commission which stated that the appeal had been administratively dismissed because the Appellant's brief was not timely filed pursuant to Reg. 67-705(H)(3). Pursuant to Reg. 67-705(H)(4), I moved on January 29, 2018, to reinstate the appeal, and the motion was filed on February 1, 2018.

6. In my motion, I apologized for the delay. I wrongly believed that the deadline to file the brief was January 31, 2018, when in fact the deadline was January 16. The deadline was not calendared correctly.

7. This appeal involves the issue of the calculation of my attorney's fee and there is no opposing party involved. Chad Abramson, attorney for Employer/Carrier, sent the Commission a letter on November 21, 2017, stating that his office is not involved in this matter, does not intend to appear and does not need to be served with pleadings or briefs related to the appeal. I have provided the Commission with a copy of that letter.

8. On January 29, 2018, I also submitted with the motion to reinstate a copy of the brief I intended to file if the Commission reinstated the appeal and allowed me to do so. I informed the Commission that I would be happy to file additional copies of the brief, the previously filed Form 30, the single commissioner's order, the transcript of the hearing and any other documents necessary to perfect the appeal. See email correspondence attached as EXHIBIT A.

9. On February 20, 2018, I received by email a copy of the Full Commission's form order denying the motion to reinstate the appeal.

10. I was ready, willing and able to immediately submit Appellant's brief to the Commission 13 days after the original due date of January 16, 2018, and 22 days before the scheduled hearing date of February 20, 2018.

Further affiant sayeth not.

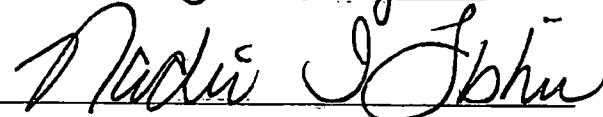
WITNESS my hand this 22nd day of February, 2018, at Columbia, South Carolina.



David Proffitt

SWORN TO and subscribed before me this

22 day of February, 2018.

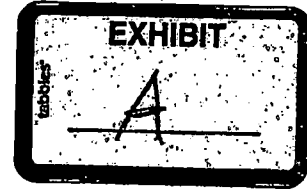


Notary Public for the State of South Carolina

My commission expires 1-24-27

David Proffitt

From: Hollmon, Eugenia <EHollmon@wcc.sc.gov>
Sent: Thursday, February 8, 2018 10:22 AM
To: Robert D. Proffitt
Cc: Nadine Fisher
Subject: RE: Status of appeal in WCC # 1600715 – Morris



Yes, the appeal hearing scheduled for this month has been postponed. The Motion request will go to Judicial Conference on February 20th. You should have an answer by the 21st.

Genia Hollmon

Eugenia Hollmon
SC Workers' Compensation Commission
Judicial Docketing Director
803-737-5737
ehollmon@wcc.sc.gov

From: David Proffitt [<mailto:dproffitt@proffittcox.com>]
Sent: Thursday, February 08, 2018 8:53 AM
To: Hollmon, Eugenia <EHollmon@wcc.sc.gov>
Cc: Nadine Fisher <nfisher@proffittcox.com>
Subject: Status of appeal in WCC # 1600715 – Morris

Ms. Hollomon:

We received the copy of our motion to reinstate the appeal filed 2/1/2018. In our earlier conversation, you indicated that the Full Commission would review the motion this month and the appeal may be rescheduled for March.

I just wanted to confirm the status of the appeal and whether the appeal hearing set for Feb. 20 is continued to a later date. If the hearing is going forward on Feb. 20, I want to ensure we have filed the additional copies of the brief and all other documents needed to perfect the appeal.

Thanks,
David

David Proffitt
Proffitt & Cox, LLP
140 Wildewood Park Drive, Suite A
Columbia, SC 29223-4311
(803) 834-7097
FAX: 1-888-711-1057
Email: dproffitt@proffittcox.com
Website: www.proffittcox.com
Show Me a Map to Proffitt & Cox, LLP

CONFIDENTIAL: The information contained in this message might contain legally privileged and confidential information intended solely for the use of the intended recipient. If you are not the intended recipient, you are hereby notified that any dissemination or duplication of this transmission is prohibited. If you have received this communication in error, please notify us.

From: David Proffitt [<mailto:dproffitt@proffittcox.com>]
Sent: Monday, January 29, 2018 11:20 AM
To: 'Hollmon, Eugenia' <EHollmon@wcc.sc.gov>
Cc: Nadine Fisher (nfisher@proffittcox.com) <nfisher@proffittcox.com>
Subject: RE: Admin Dismissal

Ms. Hollmon,
OK, we'll send the motion to reinstate today to your office.
Thanks.
David

David Proffitt
Proffitt & Cox, LLP
140 Wildewood Park Drive, Suite A
Columbia, SC 29223-4311
(803) 834-7097
FAX: 1-888-711-1057
Email: dproffitt@proffittcox.com
Website: www.proffittcox.com
[Show Me a Map to Proffitt & Cox, LLP](#)

CONFIDENTIAL: The information contained in this message might contain legally privileged and confidential information intended solely for the use of the intended recipient. If you are not the intended recipient, you are hereby notified that any dissemination or duplication of this transmission is prohibited. If you have received this communication in error, please notify us.

From: Hollmon, Eugenia [<mailto:EHollmon@wcc.sc.gov>]
Sent: Monday, January 29, 2018 10:54 AM
To: Robert D. Proffitt <dproffitt@proffittcox.com>
Cc: nfisher@proffittcox.com
Subject: RE: Admin Dismissal

Mr. Proffitt,

Because the brief was due by January 16 you will need to do a Motion to Reinstate. We can take it to Judicial Conference next month and if it is reinstated add it back for March.

Genia

Eugenia Hollmon
SC Workers' Compensation Commission
Judicial Docketing Director
803-737-5737
ehollmon@wcc.sc.gov

From: David Proffitt [<mailto:dproffitt@proffittcox.com>]

Sent: Friday, January 26, 2018 5:53 PM

To: Hollmon, Eugenia <EHollmon@wcc.sc.gov>

Cc: rfisher@proffittcox.com

Subject: Re: Admin Dismissal

Ms. Hollomon,

I apologize for the delay. I was out of the office all day today at a deposition. The brief is ready to file and I can file it on Monday.

I will need to file a motion for an extension and to reinstate the appeal. Please let me know if I should direct the motion to your office.

David Proffitt
Proffitt & Cox, LLP
140 Wildewood Park Drive, Ste. A
Columbia, SC 29223
(803) 834-7097
FAX 1 (888) 711-1057
dproffitt@proffittcox.com
www.proffittcox.com

On Jan 26, 2018, at 3:53 PM, Hollmon, Eugenia <EHollmon@wcc.sc.gov> wrote:

Attached is an Administrative Dismissal for Wcc # 1600715 – Morris.

Thank you.
Genia

Eugenia Hollmon
SC Workers' Compensation Commission
Judicial Docketing Director
803-737-5737
ehollmon@wcc.sc.gov

<Letters1 [Compatibility Mode].docx>

**SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
JUDICIAL CONFERENCE DECISION AND ORDER**

**Misty A. Morris v BB&T Corp dba BB&T Bank
SCWCC: 1600715
Commissioner: Barden**

This matter was heard before the South Carolina Workers' Compensation Full Commission in Judicial Conference on a Motion to Reinstate. The Commissioners considered the matter and ordered the matter handled in the following manner:

IT IS, THEREFORE, ORDERED the pending appeal of the Administrative Order of the Commission is hereby;
_____ Dismissed as Interlocutory. _____ Set for Oral Argument.

IT IS, THEREFORE, ORDERED the pending motion be, and hereby is;
_____ Granted. Denied. _____ Dismissed _____ Preserved for hearing

BEFORE THE;
_____ Hearing Comm. _____ Jurisdictional Comm. _____ Full Commission.


IT IS, THEREFORE, ORDERED this matter be, and hereby is; remanded to take such action and enter an Order consistent with the Court's directive.

_____ Remand to Panel as indicated below.
_____ Barden _____ James _____ Taylor
_____ Beck _____ Campbell _____ Wilkerson
_____ McCaskill

_____ Remand for Order consistent with the Order of the Court.
_____ Remand to the Hearing Commissioner.
_____ Remand to the Jurisdictional Commissioner.
_____ Other: _____

_____ Remand: _____ Panel Oral Argument. _____ En Banc Oral Argument.

AND IT IS SO ORDERED.


**T. Scott Beck, Chair
For the Commission**

Columbia, South Carolina

2/20 2018

CONCURRING:	NOT PARTICIPATING:	DISSENTING:
Commissioner Susan S. Barden	_____	_____
Commissioner Melody James	_____	_____
Commissioner Aisha Taylor	_____	_____
Commissioner Avery Wilkerson	_____	_____
Commissioner Michael Campbell	_____	_____
Commissioner Gene McCaskill	_____	_____

CERTIFICATE OF SERVICE
THIS IS TO CERTIFY THE UNDERSIGNED HAS THIS DATE SERVED THIS ORDER IN THE ABOVE ENTITLED ACTION UPON ALL PARTIES ELECTRONICALLY OR BY DEPOSITING A COPYHEREOF, POSTAGE PAID, IN THE UNITED STATES MAIL

This 20th day of February, 2018.

By: Valerie D. Deller
SCWCC Judicial Department

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE WORKERS' COMPENSATION COMMISSION

Appellate Case No. 2018-000532

MISTY A. MORRIS, CLAIMANT,

v.

BB&T CORPORATION, EMPLOYER, AND HARTFORD ACCIDENT & INDEMNITY
CO., CARRIER.


PROOF OF SERVICE

I, the undersigned counsel for the Workers' Compensation Commission, hereby certify that I have served a copy of the MOTION TO DISMISS AND/OR FOR SUBSTITUTION OF PARTIES by causing a copy of the same to be deposited in the United States mail, first class postage, prepaid, addressed to the Appellant and Claimant as listed below.

Ms. Misty A. Morris
200 Farmhouse Loop
Lexington, SC 29072

Mr. David Proffitt
Proffitt & Cox, LLP
140 Wildewood Park Dr., Suite A
Columbia, SC 29223

June 28th, 2018


J. Keith Roberts
1333 Main Street, Suite 500,
P.O. Box 1715
Columbia, South Carolina 29202-1715
(803) 737-5701

*Attorney for the South Carolina
Workers' Compensation Commission*

RECEIVED
JUN 28 2018
SC Court of Appeals

State of South Carolina

J. Keith Roberts
General Counsel
1333 Main Street, 5th Floor
P.O. Box 1715
Columbia, S.C. 29202-1715



TEL: (803) 737-5701
FAX: (803) 737-5764
KeRoberts@wcc.sc.gov

Workers' Compensation Commission

June 28th, 2018

Jenny Abbott Kitchings, Clerk of Court
South Carolina Court of Appeals
1220 Senate St.
Columbia, SC 29201

RECEIVED
JUN 28 2018
SC Court of Appeals

Re: Misty A. Morris v. BB&T Corporation (David Proffitt)
Appellate Case No. 2018-000532
WCC File No. 1600715

Dear Ms. Kitchings:

Enclosed please find the original and six (6) copies of the South Carolina Workers' Compensation Commission's Motion to Dismiss and/or for Substitution of Parties, which I would appreciate your filing with the court. The Commission understands that, as an agency of the State of South Carolina, it is exempt from paying a filing fee pursuant to Rule 240(d), SCACR. If a filing fee is required for this motion, please notify my office immediately and it will be promptly remitted.

By copy of this letter to Robert David Proffitt, Appellant, and Misty Morris, Claimant, I am hereby serving them with copies of our Motion. Please see the attached Certificate of Service.

If there is anything further the court requires from the Commission at this time, please do not hesitate to ask.

With warmest regards,

Sincerely,

A handwritten signature in cursive script that reads "J. Keith Roberts".

J. Keith Roberts, Esquire
S.C. Workers' Compensation Commission

Enclosure
Cc: David Proffitt, Esquire
Ms. Misty Morris