

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM
THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Full Commission Decision

WCC File No. 1401997 & 1422134

RECEIVED

JUL 09 2018

SC Court of Appeals

Ray K. Logan, Employee.....Respondent,

v.

Winthrop University, Employer and S.C. State Accident Fund, Carrier.....Appellants.

NOTICE OF APPEAL

Winthrop University and S.C. State Accident Fund appeal the Decision and Order of the Workers' Compensation Commission Appellate Panel dated June 5, 2018, pursuant to S.C. Code Ann. § 42-17-60. Appellants received written notice of entry of this order on June 7, 2018.

July 5, 2018



David Hill Keller, Esquire
Turner, Padget, Graham & Laney, P.A.
200 E. Broad St.
Post Office Box 1509 (29602)
Greenville, SC 29601
(864) 552-4622
(864) 552-4620 (facsimile)
dkeller@turnerpadget.com
Attorney for Appellants

Other Counsel of Record:
Tyler Bathrick, Esq.
Stewart Law Offices, LLC
P.O. Box 670
Rock Hill, SC 29731
803-328-5600
803-328-5876 (facsimile)
tyler@stewartlawoffices.net
Attorney for Respondent

The grounds for appeal are as follows:

The Defendants/Appellants reiterate the Form 30 questions presented as if specifically restated herein; and that the Full South Carolina Workers' Compensation Commission erred further as follows:

- (1) The Commission erred in finding and concluding that the Defendants were not entitled to a functional capacity evaluation and vocational assessment after claimant had already obtained the same; the error being that the Commission's denial resulted in a piecemealed, claimant-driven evidentiary record prejudicing Defendants' ability to defend this claim and denying Defendants their right under § 42-15-60 to require claimant to appear for medical examinations. This constitutes an abuse of agency discretion warranting a hearing de novo. See The Administrative Procedures Act, S.C. Code Ann. § 1-23-380(5)(f).
- (2) The Commission erred in finding and concluding that the Defendants were not entitled to a functional capacity evaluation and vocational assessment after claimant had already obtained the same; the error being that the entire decision is impermissibly based upon surmise, conjecture, and speculation as to what the Defendants' functional capacity evaluation and vocational assessment would have revealed if only the evidentiary record had been fully developed. This constitutes an abuse of agency discretion warranting a hearing de novo. See The Administrative Procedures Act, S.C. Code Ann. § 1-23-380(5)(f). See also Kennedy v. Williamsburg Co., 242 S.C. 477, 480 (1963) (citing cases).
- (3) The Commission erred in finding and concluding that the Defendants were not entitled to a functional capacity evaluation and vocational assessment after claimant had already

obtained the same; the error being that the Commission's decision was arbitrary and capricious. See The Administrative Procedures Act, S.C. Code Ann. § 1-23-380(5)(f).

- (4) The Commission erred in finding and concluding that the Defendants were not entitled to a functional capacity evaluation and vocational assessment after claimant had already obtained the same; the error being that the Commission's decision was made upon unlawful procedure. See The Administrative Procedures Act, S.C. Code Ann. § 1-23-380(5)(c).
- (5) The Commission erred in finding and concluding that the Defendants were not entitled to a functional capacity evaluation and vocational assessment after claimant had already obtained the same; the error being that the Commission's decision constitutes a structural defect that violated the Defendants' constitutional guarantee to due process, thus requiring that the hearing be deemed a nullity, the resulting order be vacated, and a de novo hearing on the merits be ordered following the claimant's submission to a functional capacity evaluation and vocational assessment arranged by Defendants. See S.C. CONST., art. I, §§ 3, 22; see also The Administrative Procedures Act, S.C. Code Ann. § 1-23-320.
- (6) The Commission erred in finding and concluding that the Defendants were not entitled to a functional capacity evaluation and vocational assessment after claimant had already obtained the same; the error being that the Commission's decision constitutes a violation of Defendants' right to equal protection of laws. See S.C. CONST., art. I, § 3.
- (7) The Commission erred in finding and concluding that the Defendants were not entitled to a functional capacity evaluation and vocational assessment after claimant had already obtained the same; the error being that the claimant was, at absolute best, only entitled to

an award for his minor back injury pursuant to § 42-9-30 and was not entitled to an award for permanent and total disability—all of which would have been shown had Defendants been allowed to fully develop the evidentiary record instead of having their rights to due process and equal protection of laws denied.



David H. Keller, Esquire (S.C. Bar # 3345)
TURNER, PADGET, GRAHAM & LANEY, P.A.
200 E. Broad Street
P.O. Box 1509 (29602)
Greenville, South Carolina 29601
(864) 552-4622
(864) 552-4620 (facsimile)
dkeller@turnerpadget.com
Attorney for Appellants

July 5, 2018

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM
THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Full Commission Decision

WCC File No. 1401997 & 1422134

RECEIVED

JUL 09 2018

SC Court of Appeals

Ray K. Logan, Employee.....Respondent,

v.

Winthrop University, Employer and S.C. State Accident Fund, Carrier.....Appellants.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Ray K. Logan by depositing a copy of it in the United States Mail, postage prepaid, on July 5, 2018, addressed to his attorney of record, Tyler Bathrick, Esq., Stewart Law Offices, LLC, P.O. Box 670, Rock Hill, SC 29731 and on the South Carolina Workers' Compensation Commission, addressed to Amy Bracy, Judicial Director, P.O. Box 1715, Columbia, South Carolina 29202.

July 5, 2018



David H. Keller, Esquire
Turner, Padgett, Graham & Laney, P.A.
200 E. Broad St.
Post Office Box 1509 (29602)
Greenville, SC 29601
(864) 552-4622
(864) 552-4620 (facsimile)
dkeller@turnerpadgett.com
Attorney for Appellants

Turner | Padget

July 5, 2018

David H. Keller, Esquire
Email: dkeller@turnerpadget.com
Writer's Direct Dial: 8645524622

The Honorable Jenny Abbott Kitchings
Clerk of Court, Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RE: Claimant: Ray K. Logan
Employer: Winthrop University
Carrier: South Carolina State Accident Fund
Claim No(s): 2014-00549, 2014-04428
WCC File No(s): 1401997, 1422134
Our File No.: 04206.00150
D/A(s): 2/26/2014, 12/1/2014

RECEIVED
JUL 09 2018
SC Court of Appeals

Dear Ms. Kitchings:

Enclosed please find Defendants' Notice of Appeal for the above-referenced claim. We are also enclosing copies of the Order which is to be challenged on appeal. Please note that, pursuant to Rule 203(d)(2)(B)(iii), no filing fee is required for "appeals by the State of South Carolina or its departments or agencies."

By copy of this letter, we are also serving Tyler Bathrick, Esquire, attorney for claimant, and the S.C. Workers' Compensation Commission.

Very truly yours,

TURNER, PADGET, GRAHAM & LANEY, P.A.



David H. Keller, Esquire

DHK/sbd

Enclosures: (1) Notice of Appeal
(2) Copy of the Full Commission Decision
(3) Proof of Service

cc: Page S. Hilton, Esq.
Tyler Bathrick, Esq.
Amy Bracy, Judicial Director, S.C. Workers' Compensation Commission

Hasler

FIRST-CLASS MAIL

07/05/2018

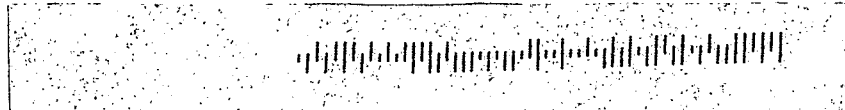
US POSTAGE

\$02.89⁰



ZIP 29601
011D11647645

First Class Mail



Turner | Padgett

P.O. Box 1509, Greenville, SC 29602

RECEIVED

JUL 09 2018

SC Court of Appeals

The Honorable Jenny Abbott Kitchings
Clerk of Court, Court of Appeals
P.O. Box 11629
Columbia, SC 29211