

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

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SC Court of Appeals

Rico Dorsey, Employee, Appellant,

v.

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

REPLY BRIEF

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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 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, 203-204, 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

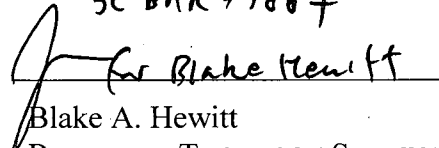
For the foregoing reasons, the Court should reverse.

July 9, 2018

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Respectfully submitted,

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