

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. SUPREME COURT

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Aisha Taylor, Commissioner
Susan S. Barden, Chair/Commissioner
Avery B. Wilkerson, Jr., Commissioner

WCC File No. 0917785
Appellate Case No. 2018-000354

Paula Russell,

Petitioner,

v.

Wal-Mart Stores, Inc.,

&

Illinois National Insurance Company,

Respondents.

REPLY OF PETITIONER

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Hilton v. Flakeboard Am. Ltd., 418 S.C. 245, 791 S.E.2d 719 (2016)1

S.C. Code Ann. § 1-23-3801

a. Reply to Respondents' argument, D. Due process requires a new evidentiary hearing before any award of benefits can be made.

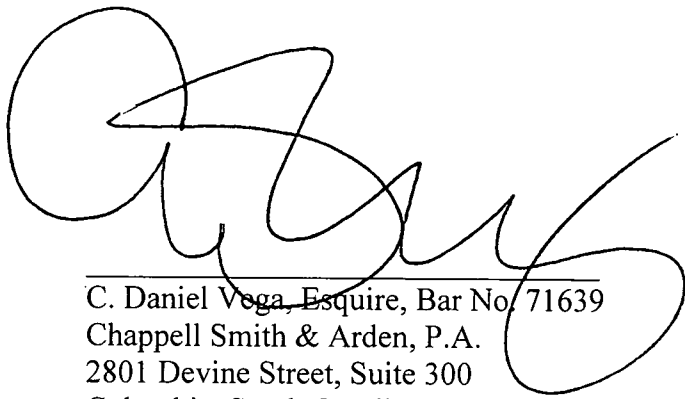
Respondents contend due process requires a new evidentiary hearing before any award for benefits can be made in the present claim. Petitioner, in reply, contends there has been no abrogation of Respondents' due process rights, because respondents had ample opportunity to present evidence at the initial hearing, and is not applicable because the remand instructions of the Court of Appeals instruct the commission to apply the proper legal standard to the evidence contained in the record.¹ Petitioner further contends respondents' argument highlights why the reasoning of *Hilton* is applicable to the present claim. 418 S.C. 245, 791 S.E.2d 719. The commission has ordered the extreme remedy of vacating and remanding the claim for a hearing *de novo*, a new evidentiary hearing on all issues previously litigated, thus ordering the parties begin anew, and thus an unexplained do over, without proper factual, legal or procedural cause.² This is an inadequate remedy of the commission, and, by doing so, the commission causes claimant, Paula Russell, to face a series of unexplained do overs.

CONCLUSION

Because Ms. Russell is in a position where the final agency decision will not provide an adequate remedy Petitioner requests this court remand her case to the Court of Appeals so she may be heard pursuant to S.C. Code Ann. § 1-23-380.

¹ Prior to Commissioner Campbell's order the parties agreed, as memorialized in their communications with the commission, the courts instructions required reconsideration of the existing evidence in light of the proper evidentiary standard and not a *de novo* hearing. App. p. 113.

² Petitioner's argument Commissioner Campbell did not simply reinstate a previous order but, instead, issued a well reasoned order is anticipated in Brief of Petitioner pages 15-16.



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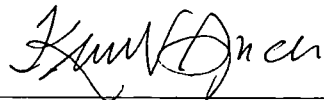
Illinois National Insurance Company,

Respondents.

PROOF OF SERVICE

The undersigned hereby certifies that on the 27th day of July, 2018, she served counsel of record with a copy of the **Reply Brief of Petitioner** by mailing copies of the same by United States mail with first class postage prepaid to the following:

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