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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

The Honorable T. Scott Beck Commissioner

SCWCC File No. 1619767

Appellate No. 2018-001111

RECEIVED

SEP 25 2018

SC Court of Appeals

Veronica Rodriguez, EmployeeRespondent.

v.

Peggy Evers, Employer and NorGuard Insurance Company, Carrier ...Appellants.

RESPONDENT'S MOTION TO DISMISS APPEAL OR, IN THE ALTERNATIVE,
TO REQUIRE APPELLANT TO FILE A CORRECTED RECORD ON APPEAL

Don C. Gibson
PO Box 60669
North Charleston, SC 29419
(843)744-1887
Attorney for Respondent

RESPONDENT'S MOTION TO DISMISS APPEAL OR, IN THE ALTERNATIVE,
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NOW COMES RESPONDENT, Veronica Rodriguez, by undersigned counsel, and moves this Honorable Court, in the alternative, to dismiss this appeal due to Appellants' failure to comply with Rule 210 SCACR, or, to require Appellants to file a corrected Record on Appeal and to allow Respondent appropriate additional time to file her Final Brief, as follows:

Respondent shows the Court that the Record on Appeal in this matter was filed by Appellants on September 12, 2018 and that undersigned counsel received an electronic copy of same on September 18, 2018, but did not receive any sort of copy of the Record before September 18, 2018. Respondent's Final Brief is not due to be filed until October 2, 2018. This motion is, thus, timely filed.

Respondent further shows the Court that on or about August 10, 2018 she designated certain materials to be included in the Record on Appeal, and that Appellants omitted them from the Record on Appeal, to wit:

- (a) Respondent's designated item # 2: "WCC Admin. Order (3/26/2018)" (dismissing appeal to the WCC Commission); and
- (b) A portion of Respondent's designated item # 5: Cover page of the item described as "Hearing Transcript excerpt, Cover page; pp 21-22; 89-90; 92; and, Certificate p 98 (11/3/2017)".¹

Rule 210(c) provides: "The Record on Appeal shall include all matter designated to be included by any party under Rule 209 and shall comply with the requirements of Rule 267." 210(c) SCACR. Appellants' failures to include a designated order of the tribunal below dismissing the appeal to that Commission, and the cover page showing what matter the transcript excerpt pertains to, are significant failures to comply with this Rule. They are not merely technical failures because the Court will not consider any fact not reflected in the Record. Rule 210(h); and, *see, Bonaparte v. Floyd*, 291 S.C. 427, 444, 354 S.E.2d 40, 50 (Ct. App. 1987) (appellant bears the burden of providing a record on appeal sufficient for intelligent review.).

Additionally, Appellants' Record on Appeal includes prohibited duplicated items; items not

¹ See, Respondent's Designation of Matter, filed on or about August 10, 2018; and compare to Appellants' Record on Appeal filed on or about September 12, 2018.

considered by the lower tribunal; and other unnecessary items, to wit:

- (c) Three copies of WCC Commission Order dated April 16, 2018 (R. pp. 16; 43; 68);
- (d) Appellants' cover letter to the WCC Commission, dated March 27, 2018 (R. pp. 69);
- (e) Three copies of Appellants' Motion to Reinstate, dated March 27, 2018 (R. pp. 35; 44; 70);
- (f) Two copies of the WCC Commission Order dated May 21, 2018 (R. pp. 17; 61);
- (g) Appellants' cover letter to the WCC Commission dated May 4, 2018 (R. pp. 62)
- (h) Two copies of Appellants' Amended Motion to Reconsider and/or for Rehearing dated May 4, 2018 (R. pp. 49; 64); and,
- (i) Nine certificates of service (R. pp. 15; 19; 39; 48; 52; 58; 67; 74; 75-76). (Service is not an issue on appeal.)

Rule 210 prohibits inclusion of such items as cover letters unless they were considered by the lower tribunal. "The Record shall not, however, include matter which was not presented to the lower court or tribunal." 210(c) SCACR. It also prohibits inclusion of certificates of service where service is not an issue on appeal. "[T]he portion of a pleading showing verification or service shall not be included unless relevant to the appeal." *Id.*

Rule 210 also requires Appellants counsel to certify that the Record does not include unnecessary items such as the above-referenced duplicates, nor prohibited certificates of service and cover letters not considered by the lower tribunal. "Appellant or his counsel shall certify that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material." SCACR 210(g)

Appellants' counsel certified as follows:

Pursuant to Rule 210(c) of the South Carolina Rules of Appellate Procedure, I certify that the Record on Appeal only contains matter that was presented at the lower court or tribunal. Additionally, pursuant to Rule 209(c), I certify that the Record does not contain matter which is irrelevant to the appeal. Furthermore, and with the exception of certain documents designated by the Appellant, which was [sic] not considered by the lower court or tribunal, I also certify that the Record contains all the material proposed to be included by any of the other parties and not any other material.

(R. p. 77)

Undersigned does not understand what is meant by counsel's statement that "*with the exception of certain documents designated by the Appellant*, which was not considered by the lower court or tribunal, I also certify that the Record contains all the material proposed to be included by any of the

other parties and not any other material." *Id.* (emphasis added) But, it is clear that Appellants have failed to comply with Rule 210 SCACR in multiple ways and that the Record on Appeal does not contain the March 26, 2018 Order of the lower tribunal dismissing Appellants' appeal to the WCC Commission. This substantial omission precludes the Court of Appeals from considering whether, in fact, that appeal was ever dismissed. 210(h) SCACR.

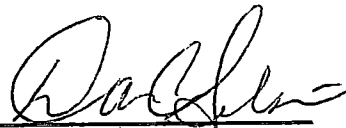
"Whenever it appears that an appellant ... has failed to comply with the requirements of these Rules, the clerk shall issue an order of dismissal, which shall have the same force and effect as an order of the appellate court." SCACR 260.

For these reasons, Plaintiff contends that this appeal merits dismissal.

In the alternative, Appellants should be ordered to file a corrected Record on Appeal, including items (a) and (b) above; removing items (c) through (i) above; and including a true and correct certification. Further, it is requested that Plaintiff be allowed the appropriate amount of extra time in which to file her Final Brief.

WHEREFORE, Respondent respectfully requests that this Honorable Court dismiss this appeal, or, in the alternative, that Appellants be ordered to file a corrected Record on, A and that corresponding additional time be granted for filing Respondent's Final Brief.

This motion is submitted in good faith and not for any improper purpose, this 22nd day of September 2018.



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Attorney for Respondent

PROOF OF SERVICE OF RESPONDENT'S MOTION TO DISMISS APPEAL
OR, IN THE ALTERNATIVE, TO REQUIRE APPELLANT TO FILE A
CORRECTED RECORD ON APPEAL

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SCWCC File No. 1619767

Appellate No. 2018-001111

Veronica Rodriguez, Employee Respondent

v.


Peggy Evers, Employer and NorGuard Insurance Company, CarrierAppellants

RESPONDENT'S MOTION TO DISMISS APPEAL OR, IN THE ALTERNATIVE, TO
REQUIRE APPELLANT TO FILE A CORRECTED RECORD ON APPEAL.

PROOF OF SERVICE

I certify that I have served the Respondent's Motion to Dismiss Appeal or, in the alternative, to require Appellant to file a corrected Record on Appeal by depositing a copy of it in the United States Mail, postage prepaid, on September 22, 2018 addressed to her attorney, George D. Gallagher, Esq., 1122 Lady Street Suite 620, P.O. Box 11669, Columbia, SC 29211

September 22, 2018


Don C. Gibson
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Attorney for Respondent

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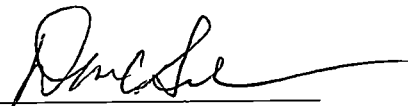
Peggy Evers, Employer and NorGuard Insurance Company, Carrier Appellants

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September 22, 2018



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WEBSITE:

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September 22, 2018

Via First Class Over-Nite Mail

Clerk of the South Carolina Court of Appeals
Attention: Mary Caitlin
1220 Senate Street
Columbia, South Carolina 29201

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SEP 25 2018

SC Court of Appeals


Re: Client/Respondent: Veronica Rodriguez Texacahua
Date of Injury: December 5, 2016
Employer/Appellant: Peggy Evers, Cleaner Concepts/NorGuard Ins. Co.
WCC File No.: 1619767
Appellate No.: 2018-001111

Dear Ms. Mary Caitlin:

In connection with the above referenced matter, please find enclosed the Respondent's original and one copy of a Motion to Dismiss Appeal or, in the Alternative, to Require Appellant to File a Corrected Record on Appeal for filing along with my firm's filing fee check in the amount of \$25.00. I would appreciate your returning one (1) file marked copy to me in the self-addressed envelope with postage pre-paid.

I certify that each opposing counsel has been served with a copy of the Motion as evidenced by the Proof of Service attached to the Motion.

With kindest regards, I remain

Sincerely yours,

Don C. Gibson

Enclosures: as stated

cc: George D. Gallagher, Esquire
Kevin Desmond Maroney, Esquire

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GIBSON LAW FIRM, LLC

5422 Rivers Avenue
North Charleston, SC 29406

To:

**South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201**

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