

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM S.C. WORKERS COMPENSATION COMMISSION

Case No. 2018-000532

RECEIVED
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SC Court of Appeals

Misty A. Morris, Claimant

v.

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

IN RE: Attorney's Fee Petition of David ProffittAppellant

v.

South Carolina Workers' Compensation Commission.....Respondent.

INITIAL BRIEF OF RESPONDENT

J. Keith Roberts
*Counsel to South Carolina
Workers' Compensation Commission*
S.C. Bar No. 100735
Post Office Box 1715
Columbia, South Carolina 29202-1715
(803)737-5701

COUNSEL FOR RESPONDENTS

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QUESTIONS PRESENTED

1. Did Respondent abuse its discretion in denying Appellant's motion to reinstate his appeal, where Appellant failed to submit his brief on the due date?

STATEMENT OF THE CASE

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. The single Commissioner found that Mr. Proffitt was attempting to charge Ms. Morris an excessive fee in the amount of \$11,992.29. The single Commissioner ordered that the disputed \$11,992.29 should be paid to Ms. Morris.

Mr. Proffitt, in an effort to keep the disputed \$11,992.29 for himself, attempted to appeal the single Commissioner's 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 Regs. 67-705(H)(3). 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. Rather than pay Ms. Morris the \$11,992.29 to which she is entitled, Mr. Proffitt appealed the final decision of the Commission to the Court of Appeals.

STANDARD OF REVIEW

Under the South Carolina Administrative Procedures Act, an appellate court can reverse or modify a decision of the South Carolina Workers' Compensation Commission “where the substantial rights of the appellant have been prejudiced because the decision is affected by an error of law or is clearly erroneous in view of the reliable, probative, and substantial evidence considering the record as a whole.” *Trotter v. Trane Coil Facility*, 393 S.C. 637, 644, 714 S.E.2d 289, 293 (2011).

ARGUMENT

I. THE WORKERS' COMPENSATION COMMISSION DID NOT ABUSE ITS DISCRETION IN DENYING APPELLANT'S MOTION TO REINSTATE.

Appellant submits that the Respondent has abused its discretion in denying Appellant's Motion to Reinstate, because Appellant has shown good cause to reinstate the appeal.

If the appellant fails to file a brief within ten days of receipt of the Form 31, the Judicial Department may remove the case from the review hearing docket by issuing an administrative order dismissing the appeal. S.C. Code Regs. 67-705(H)(3). An appeal administratively dismissed by the Judicial Department may be reinstated for a good cause upon motion to the Commission. S.C. Code Regs. 67-705(H)(4).

In the present case, Respondent on December 15, 2017, issued a Form 32 Briefing Schedule and Notice of Appellate Hearing. Appellant's brief was due to be filed on January 16, 2018.

Respondent sent Appellant a letter received by Appellant on January 26, 2018, stating the appeal had been administratively dismissed because Appellant's brief was not timely filed pursuant to Regs. 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. Appellant apologized for the delay and admitted the Appellant did not calendar the deadline correctly.

Respondent submits that Appellant has not shown good cause to reinstate the appeal to the Full Commission. Just because an attorney candidly admits they were wrong, does not amount to good cause. If that were the case, the Briefing Schedule would be meaningless.

Therefore, the Respondent did not abuse its discretion in denying the motion to reinstate, and the Appellant has not shown good cause to reinstate the appeal.

II. THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION IS NOT A PROPER PARTY TO THIS APPEAL

This issue was already raised in Respondent's Motion filed on June 28th, 2018, and ruled upon by the Court of Appeals decision served on August 16th, 2018. However, Respondents are not abandoning this position and want it preserved for purposes of appellate review.

CONCLUSION

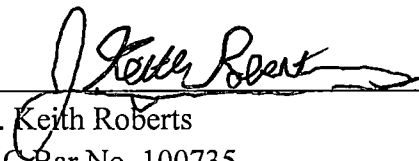
The Workers' Compensation Commission held that Appellant's Motion to Reinstate should be denied pursuant to S.C. Code Regs. 67-705(H)(3) due to Appellant not filing his brief on time. Appellant has not shown good cause as to why the appeal should

be reinstated pursuant to S.C. Code Regs. 67-705(H)(4). Therefore, the decision of the Workers Compensation Commission denying the Motion to Reinstatement should be UPHeld and Appellant's appeal should be DISMISSED.

Dated this the 20th day of September, 2018.

Respectfully submitted,

THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION



J. Keith Roberts
SC Bar No. 100735
1333 Main Street, Suite 500,
P.O. Box 1715
Columbia, South Carolina 29202-1715
(803) 737-5701
*Attorney for Respondent South Carolina Workers' Compensation
Commission*

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

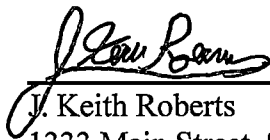
I, the undersigned counsel for the Workers' Compensation Commission, hereby certify that I have served a copy of the INITIAL BRIEF OF RESPONDENT by causing a copy of the same to be deposited in the United States mail, first class postage, prepaid, addressed to the Appellant and Claimant as listed below.

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

Ms. Misty A. Morris
107 Waverly Point Dr.,
Lexington, SC 29072

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

September 20th, 2018


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

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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

September 20th, 2018

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

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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 one (1) copy of Respondent the South Carolina Workers' Compensation Commission's Initial Brief of Respondent which I would appreciate your filing with the court.

By copy of this letter to Robert David Proffitt, Appellant, and Misty Morris, Claimant, I am hereby serving them with copies of our Initial Brief. 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 black ink that reads "J. Keith Roberts". The signature is written in a cursive style with a large, sweeping initial "J".

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

Enclosure

Cc: David Proffitt, Esquire
Ms. Misty Morris