

MOTION RESPONDENT BREIF AND DESIGNATION APPEAL

RECEIVED
OCT 30 2018
SC Court of Appeals
OCTOBER 27, 2018 *Y.S.C.*

1. Did the Commissioner fail to consider important reasons for award of compensation? If so what reasons?

The relationship between Mr. Despies and S&A Construction and More LLC was that Mr. Despies was a casual laborer with no set work hours or days. Mr. Despies may have worked with S&A Construction a total of 10 times throughout the entire year of 2016. Based on SC Code Section 42-1-360 Mr. Despies would not even qualify for any type of workman's compensation due to the relationship status with S&A Construction. S&A Construction does not have a payroll for the years 2015, 2016 nor 2017 because it would have been less than \$3000. S&A Construction and More LLC does not have four employees that are full-time or part-time.

2. Did the Commissioner incorrectly decide the facts? If so, what facts?

The Commissioner did incorrectly decide the facts of this case because he did not hear both sides of the case due to the fact S&A Construction and More LLC was not properly notified of the hearing date and time. I have been told the information was dropped in the regular mail and I should have received it, however I did not receive proper notice of the hearing as required by SC Code Law. I was scheduled for a deposition, but it was canceled therefore, the Commissioner was never allowed to hear my side of the events nor did I have the opportunity to attend the hearing. Please see attached email.

Mr. Despies was intoxicated during the injury as provided in the evidence. I have also included a statement from Mr. Ramon Martinez whom was also present the day of the injury and is willing to testify or give a deposition. Mr. Ramon Martinez witnessed Mr. Despies drinking the day of the injury and notified myself (Scott Calder). Mr. Despies was told by myself (Scott Calder) do not get on the roof; I will have someone drive you home. Mr. Despies took it upon himself to get on the roof after I instructed him not to get on the roof. Mr. Despies also tested positive on the Alcohol CAGE screening at Conway Medical Center by Dr. Coradi provided on page 1 of the chart. He also had a positive alcohol screening with Dr. William Whiteside MD at Waccamaw Orthopedics on 12/27/2016 page 1 of the dictated report.

Mr. Despies did en-fact commit fraud to the SC Workers Compensation Uninsured Employers fund by committing perjury on Form 50 stating he was a full-time employee of S&A Construction and More LLC. Mr. Despies has no evidence that he was a full-time or part-time employee at S&A Construction and More LLC. S&A Construction and More LLC does not have any full-time or part-time employees therefore; his statement is completely false.

Mr. Despies also stated he earned \$500.00 per week and his story was collaborated by his witness Randy Allison whom also committed fraud by stating that he was a co-employee and that Mr. Despies was a Foreman and received higher pay rate than other employees. Once again S&A Construction and More LLC has no full-time, nor part-time employees. Mr. Allison worked with S&A Construction a total of three time as a causal employee. Mr. Allison's statement is hear-say and should not be entered as evidence. Mr. Allison has no idea what Mr. Despies was paid if anything and since I do not have full-time or part-time employees, I surely would not call Mr. Despies a Foreman. That is not evidence that is an opinion based on hearsay. Therefore, pursuant to South Carolina Code Law 42-9-440 both Mr. Allison and Mr. Despies should be reported for fraud.

Did claimant complete smoking cessation per Dr. Whiteside? Claimant stated he wanted to proceed with a treatment plan proposed by Dr. Whiteside. Claimant has not made any reasonable attempt to complete Dr. Whiteside's orders to ensure he is a candidate for the treatment. Dr. Whiteside refused to complete operation on patient unless patient stopped smoking which patient has refused to comply therefore, Mr. Despies should be responsible for his medical treatment. Per the dictated medical record report dated 4/25/2017 page 2 of 15. Mr. Despies still did not qualify for surgical treatment due to his continuing to smoke cigarettes and not completing the program.

3. Do you think the commissioner applied the wrong law? If so what law?

The Commissioner did not uphold SC Code Section 42-1-40. Mr. Despies stated he was paid \$100.00 per day working full-time and his wages were \$500.00 a week. Mr. Despies made this number up and there is no evidence to support his claim. He did not provide any check stubs nor any tax documentations because they do no exist. Wages should have been defined as in SC Code Section 42-1-40 which would have been zero. S&A Construction and More does not have full-time and part-time employees nor do we have a payroll, therefore no wages should have been calculated.

4. Do you feel there are any other reasons why the Commissioners judgment was wrong? If so what?

Mr. Despies currently has twenty-three "Open" judgments against him in New Jersey. He also has "Open" warrants in New Jersey therefore, the commissioner should have never awarded monies directly to Mr. Despies due to the fact some of the Judgments Are Federal Liens and all judgments are open.

When did the injury occur?

Mr. Despies attorney states on Form 50 the injury occurred on 12/21/2016, however per Conway Medical Center the injury actually occurred on 12/22/2016.

5. What action do you want the commission to take in this case?

This case should be dismissed.

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MOTION TO FILE THE BREIF & DESIGNATION APPEAL

Employers fund by committing perjury on Form 50 stating he was a full-time employee of S&A Construction and More LLC. Mr. Despies has no evidence that he was a full-time or part-time employee at S&A Construction and More LLC. S&A Construction and More LLC does not have any full-time or part-time employees therefore; his statement is completely false.

Mr. Despies also stated he earned \$500.00 per week and his story was collaborated by his witness Randy Allison whom also committed fraud by stating that he was a co-employee and that Mr. Despies was a Foreman and received higher pay rate than other employees. Once again S&A Construction and More LLC has no full-time, nor part-time employees. Mr. Allison worked with S&A Construction a total of three time as a casual employee. Mr. Allison's statement is hear-say and should not be entered as evidence. Mr. Allison has no idea what Mr. Despies was paid if anything and since I do not have full-time or part-time employees, I surely would not call Mr. Despies a Foreman. That is not evidence that is an opinion based on hearsay. Therefore, pursuant to South Carolina Code Law 42-9-440 both Mr. Allison and Mr. Despies should be reported for fraud.

3. Was SC Code Section 42-1-40 upheld?

Mr. Despies stated he was paid \$100.00 per day working full-time and his wages were \$500.00 a week. Mr. Despies made this number up and there is no evidence to support his claim. He did not provide any check stubs nor any tax documentations because they do no exist. Wages should have been defined as in SC Code Section 42-1-40 which would have been zero. S&A Construction and More does not have full-time and part-time employees nor do we have a payroll, therefore no wages should have been calculated.

4. Did claimant complete smoking cessation per Dr. Whiteside? Claimant stated he wanted to proceed with a treatment plan proposed by Dr. Whiteside. Claimant has not made any reasonable attempt to complete Dr. Whiteside's orders to ensure he is a candidate for the treatment. Dr. Whiteside refused to complete operation on patient unless patient stopped smoking which patient has refused to comply therefore, Mr. Despies should be responsible for his medical treatment. Per the dictated medical record report dated 4/25/2017 page 2 of 15. Mr. Despies still did not qualify for surgical treatment due to his continuing to smoke cigarettes.

5. What was the relationship between Mr. Despies and S&A Construction and More LLC?

Mr. Despies was a casual laborer with no set work hours or days. Mr. Despies may have worked with S&A Construction a total of 10 times throughout the entire year of 2016. Based on SC Code Section 42-1-360 Mr. Despies would not even qualify for any type of workman's compensation due to the relationship status with S&A Construction. S&A Construction does not have a payroll for the years 2015, 2016 nor 2017 because it would have been less than \$3000. S&A Construction and More LLC does not have four employees that are full-time or part-time.

6. Was Mr. Despies intoxicated during the injury as provided in the evidence?

I have also have a witness Mr. Ramon Martinez whom was also present the day of the injury and is willing to testify or give a deposition. Mr. Ramon Martinez witnessed Mr. Despies drinking the day of the injury and notified myself (Scott Calder). Mr. Despies was told by myself (Scott Calder) do not get on the roof; I will have someone drive you home. Mr. Despies took it upon himself to get on the roof after I instructed him not to get on the roof. Mr. Despies also tested positive on the Alcohol CAGE screening at Conway Medical Center by Dr. Coradi provided on page 1 of the chart. He also had a positive alcohol screening with Dr. William Whiteside MD at Waccamaw Orthopedics on 12/27/2016 page 1 of the dictated report.

7. When did the injury occur?

Mr. Despies attorney states on Form 50 the injury occurred on 12/21/2016, however per Conway Medical Center the injury actually occurred on 12/22/2016.


RULES 208 & 209
OCTOBER 27, 2018

MOTION REQUESTING TO SERVE AND FILE BREIF OUTSIDE OF FILING DEADINES

I am requesting the court take all evidence into consideration and out an end to this nightmare. I am may be inside the filing deadlines, I am not sure based on the way the law is written.

My wife has had a lot of heart issues this month and actually had had open heart surgery. I am hoping I and praying I am still inside the guidelines so my side of this story can be heard. Please let me know if you need anything else from me.

Thanks,



Scott Calder

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PRIORITY MAIL
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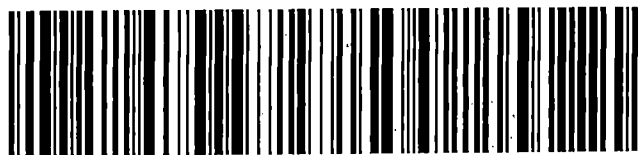
1024

PRIORITY MAIL 1-Day®

EXPECTED DELIVERY DAY: 10/29/2018

B012

USPS TRACKING NUMBER



9505 5134 4962 8300 3179 44

FROM: SJA Construction SCOTT CALDER
296 Hwy 64
Conway, SC 29526

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

WHEN USED INTERNATIONALLY,
A CUSTOMS DECLARATION
LABEL MAY BE REQUIRED.