

APPELLANT PANEL  
DECISION AND ORDER  
OF THE  
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

S.C. W.C.C. FILE NOS. 1319203, 1322451, 1420487

Terry Capone, Employee,

Claimant / Appellant

v.

City of Columbia, Employer,

And

Companion Property & Casualty TPA

Defendants / Respondents.

RECEIVED  
MAR 07 2019  
SC Court of Appeals

---

Appellate Panel Review held in Columbia,  
South Carolina on October 22, 2018 per  
Notices timely and properly served on all  
parties of interest.

Appellate Panel Decision and Order filed

March 1, 2019.

---

AGRUMENTS BRIEFED BY:

Terry Capone, *pro se* Claimant, of Columbia, South Carolina  
for Claimant / Appellant

Cynthia C. Dooley, Esquire, Columbia, South Carolina,  
for Defendants / Respondents.

## STATEMENT OF THE CASE

The parties were heard by Commissioner Avery Wilkerson, Jr., Hearing Commissioner in Columbia, South Carolina on February 21, 2018.

On March 27, 2018, Commissioner Wilkerson, Jr. issued the following Stipulations, APA submissions, Statement of Case, Evidence of Case, Findings of Facts, Conclusions of Law, and Order.

## STIPULATIONS

At the call of the case, the parties stipulated that the South Carolina Workers' Compensation Commission had jurisdiction in this case and that venue was proper in Richland County. Claimant brought three separate claims and all have been adjudicated.

Claimant filed without counsel and was previously properly advised of his right to counsel. Claimant knowingly and voluntarily waived his right to counsel and proceeded Pro Se.

The Claimant seeks benefits under the South Carolina Workers' Compensation Act based upon alleged injuries occurring on June 24, 2014, wherein he injured his toe (WCC File No. 1420487), on October 12, 2013, in which he re-injured his bilateral hands/wrists (WCC File No. 1319203), and on November 7, 2013 (WCC File No. 1322451), where he alleges an aggravation of a psychological injury, all while in the employ of the Employer/Defendants. Therefore, the South Carolina Workers' Compensation Commission has jurisdiction of these cases.

Without Objection, and with the exception of any self-serving statements or unstipulated medical reports, the Commission's file was made a part of the record.

### STATEMENT OF THE CASE

This matter was reviewed by the undersigned following the filing of three Forms 50 by the Claimant Pro Se, one in WCC File No. 1322451, with a corresponding date of accident of November 7, 2013, one in WCC File No. 1319203, with a corresponding date of accident in October 12, 2013, and one in WCC File No. 1420487, with a corresponding date of accident in June 24, 2014.

Claimant's claims for Workers' Compensation benefits for injuries arising out of and in the course of his employment on or about November 2013 to June 2014 to his hand, toe, and psychology were heard on August 21, 2015. These cases were fully and finally adjudicated by a Decision and Order by Commissioner McCaskill dated December 2, 2015. This Order was not timely appealed and there was no medical evidence to support a then existing mental condition that would have prohibited the Claimant from filing an appeal. Therefore, this Order is the law of the case.

Claimant has now filed Forms 50 on the above-referenced claims, requesting a Hearing to determine issues that have already been decided by the Commission. Defendant has argued that all three cases have been adjudicated in a full and final hearing on August 21, 2015 and since no timely appeal was filed, res judicata should apply.

### FINDINGS OF FACT

1. After a review of the pleadings, the prior Decision and Order, and the complete record, I make the following Findings of Fact:
2. Claimant alleged injuries occurred on June 24, 2014, wherein he injured his toe (WCC File No. 1420487), on October 12, 2013, in which he re-injured his bilateral hands/wrists (WCC File No. 1319203), and on November 7, 2013 (WCC File No. 1322451), where he alleges an aggravation of a psychological injury, all while in the employ of the Employer/Defendants.
3. On August 21, 2015, a full and final hearing was adjudicated on the merits of the case and a Decision and Order was filed December 2, 2015 by Commissioner Gene McCaskill finding that the Claimant is not entitled to any additional benefits for these claims under the Act.
4. Claimant acknowledges that he did not appeal the Decision and Order and I find no medical evidence to suggest that the Claimant had a then existing mental condition which prohibited him from filing a timely appeal.
5. As such, I find that res judicata applies and the Decision and Order filed on December 2, 2015 by Commissioner Gene McCaskill stands on the final adjudication on the merits of this case.

### RULE OF LAW

1. This matter is governed by South Carolina Workers' Compensation Act and according to the Act, an application for review has to be made within fourteen days from the date when the notice of the award shall be given. S.C. Code Ann. §42-

17-50. According to *Wally v. C.Y. Thomason*, "If no application made for review of the hearing commissioner's award, that award becomes effective as the award of the Commission". *Wally v. C.Y. Thomason Co. Et. Al.*, 232 S.C. 153, 101 S.E.2d 286 (1957).

2. Res judicata bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties. *Judy v. Judy*, 393 S.C. 160, 172, 712 S.E. 2d, 414 (2011). Under the doctrine of res judicata, a litigant is barred from raising any issues which were adjudicated in the former suit and any issues which might have been raised in the form suit. *ID*

### ORDER

IT IS ORDERED that the Claimant's Forms 50 Requests for Hearings in the above referenced claims are DENIED and DISMISSED WITH PREJUDICE on the grounds of res judicata.

IT IS ORDERED that the further pleadings filed by the Claimant against Defendants subsequent to the date this Decision and Order becomes the law of the case shall be reviewed by the Jurisdictional Commissioner and shall be administratively dismissed if they relate to the subject matter already decided by the final decisions of the Commission cited above.

IT IS ORDERED that subsequent to the date this Decision and Order becomes the law of the case Defendants shall be relieved of any obligation to respond to further filings by Claimant related to WCC File No. 1322451, with a

corresponding date of November 7, 2013, WCC File No. 1319203, with a corresponding date of October 12, 2013, and WCC File No. 1420487, with a corresponding date of June 24, 2014 unless specifically instructed to respond by the Commission. Nothing contained herein shall be construed to prevent the parties from pursuing a proper appeal of this Decision and Order or pursuing a future, unrelated claim not previously adjudicated by the Commission.

**AND IT IS SO ORDERED.**

**APPEAL**

Within the statutory period, the Claimant filed an Application for Review in this case setting forth reasons for an appeal. A copy of this application was furnished to all interested parties prior to appellate review.

All proper testimony has been taken together with all documentary evidence and a transcript of the hearing; appellate briefs were delivered to the individual members of the South Carolina Workers' Compensation Appellate Panel.

By appeal Claimant/Appellant submits the following:

1. Did the Single Commissioner err in finding that the Appellant was not entitled to any benefits for all three claims under the Act?
2. Did the Single Commissioner err incorrectly decide the facts?
3. Did the Single Commissioner err in applying the wrong law?
4. Was the Single Commissioner's judgment wrong?

Based on a review of the whole record and briefs, the panel by unanimous vote Affirms the Decision and Order of the Single Commissioner. Accordingly, the

stipulations, APA submissions, statement of case, evidence of case, finding of fact, conclusions of law and order set forth below shall become and hereby are the law of the case:

### STIPULATIONS

At the call of the case, the parties stipulated that the South Carolina Workers' Compensation Commission had jurisdiction in this case and that venue was proper in Richland County. Claimant brought three separate claims and all have been adjudicated.

Claimant filed without counsel and was previously properly advised of his right to counsel. Claimant knowingly and voluntarily waived his right to counsel and proceeded Pro Se.

The Claimant seeks benefits under the South Carolina Workers' Compensation Act based upon alleged injuries occurring on June 24, 2014, wherein he injured his toe (WCC File No. 1420487), on October 12, 2013, in which he re-injured his bilateral hands/wrists (WCC File No. 1319203), and on November 7, 2013 (WCC File No. 1322451), where he alleges an aggravation of a psychological injury, all while in the employ of the Employer/Defendants. Therefore, the South Carolina Workers' Compensation Commission has jurisdiction of these cases. Without Objection, and with the exception of any self-serving statements or unstipulated medical reports, the Commission's file was made a part of the record.

## STATEMENT OF THE CASE

This matter was reviewed by the undersigned following the filing of three Forms 50 by the Claimant Pro Se, one in WCC File No. 1322451, with a corresponding date of accident of November 7, 2013, one in WCC File No. 1319203, with a corresponding date of accident in October 12, 2013, and one in WCC File No. 1420487, with a corresponding date of accident in June 24, 2014.

Claimant's claims for Workers' Compensation benefits for injuries arising out of and in the course of his employment on or about November 2013 to June 2014 to his hand, toe, and psychology were heard on August 21, 2015. These cases were fully and finally adjudicated by a Decision and Order by Commissioner McCaskill dated December 2, 2015. This Order was not timely appealed and there was no medical evidence to support a then existing mental condition that would have prohibited the Claimant from filing an appeal. Therefore, this Order is the law of the case.

Claimant has now filed Forms 50 on the above-referenced claims, requesting a Hearing to determine issues that have already been decided by the Commission. Defendant has argued that all three cases have been adjudicated in a full and final hearing on August 21, 2015 and since no timely appeal was filed, res judicata should apply.

## FINDINGS OF FACT

1. After a review of the pleadings, the prior Decision and Order, and the complete record, we make the following Findings of Fact:

2. Claimant alleged injuries occurred on June 24, 2014, wherein he injured his toe (WCC File No. 1420487), on October 12, 2013, in which he re-injured his bilateral hands/wrists (WCC File No. 1319203), and on November 7, 2013 (WCC File No. 1322451), where he alleges an aggravation of a psychological injury, all while in the employ of the Employer/Defendants.

3. On August 21, 2015, a full and final hearing was adjudicated on the merits of the case and a Decision and Order was filed December 2, 2015 by Commissioner Gene McCaskill finding that the Claimant is not entitled to any additional benefits for these claims under the Act.

4. Claimant acknowledges that he did not appeal the Decision and Order and I find no medical evidence to suggest that the Claimant had a then existing mental condition which prohibited him from filing a timely appeal.

5. As such, I find that res judicata applies and the Decision and Order filed on December 2, 2015 by Commissioner Gene McCaskill stands on the final adjudication on the merits of this case

#### RULE OF LAW

1. This matter is governed by South Carolina Workers' Compensation Act and according to the Act, an application for review has to be made within fourteen days from the date when the notice of the award shall be given. S.C. Code Ann. §42-17-50. According to *Wally v. C.Y. Thomason*, "If no application made for review of the hearing commissioner's award, that award becomes effective as the award of the

Commission". *Wally v. C.Y. Thomason Co. Et. Al.*, 232 S.C. 153, 101 S.E.2d 286 (1957).

2. Res judicata bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties. *Judy v. Judy*, 393 S.C. 160, 172, 712 S.E. 2d, 414 (2011). Under the doctrine of res judicata, a litigant is barred from raising any issues which were adjudicated in the former suit and any issues which might have been raised in the form suit. *ID*

### ORDER

IT IS ORDERED that the Claimant's Forms 50 Requests for Hearings in the above referenced claims are DENIED and DISMISSED WITH PREJUDICE on the grounds of res judicata.

IT IS ORDERED that the further pleadings filed by the Claimant against Defendants subsequent to the date this Decision and Order becomes the law of the case shall be reviewed by the Jurisdictional Commissioner and shall be administratively dismissed if they relate to the subject matter already decided by the final decisions of the Commission cited above.

IT IS ORDERED that subsequent to the date this Decision and Order becomes the law of the case Defendants shall be relieved of any obligation to respond to further filings by Claimant related to WCC File No. 1322451, with a corresponding date of November 7, 2013, WCC File No. 1319203, with a corresponding date of October 12, 2013, and WCC File No. 1420487, with a

corresponding date of June 24, 2014 unless specifically instructed to respond by the Commission. Nothing contained herein shall be construed to prevent the parties from pursuing a proper appeal of this Decision and Order or pursuing a future, unrelated claim not previously adjudicated by the Commission.

**AND IT IS SO ORDERED.**

**ORDER**

Based on the foregoing Findings of Fact and Conclusions of Law it is hereby ordered that the order of the hearing commissioner filed in the above captioned matters on March 27, 2018, is hereby affirmed. The Claimant's claim for a compensable injury by accident is denied in its entirety.

**AND IT IS SO ORDERED.**

South Carolina Workers'  
Compensation Commission

  
Susan S. Barden on behalf of the appellate panel

**FULL AFFIRMATION**

Concur:

  
T. Scott Beck, Chair

  
Gene McCaskill, Commissioner

**CERTIFICATE OF SERVICE**

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

**By Eugenia Hollmon on March 1, 2019**