

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA
SC Workers' Compensation Commission
Appellate Panel

Appellate Case No.: 2018-001237

RECEIVED
MAR 07 2019
SC Court of Appeals

Kenneth L. Barr, Claimant, Appellant,

v.

Darlington County School District, Employer,
and SC School Boards Insurance Trust,
Carrier, Respondents.

RECORD ON APPEAL
VOLUME IV OF IV

Preston F. McDaniel
McDANIEL LAW FIRM
1315 Elmwood Avenue
Columbia, South Carolina 29201

Gerald Malloy
MALLOY LAW FIRM
Post Office Box 1200
Darlington, South Carolina 29551

Counsel for Appellant

Kirsten L. Barr, Attorney
Trask & Howell
Post Office Box 2167
Mt. Pleasant, SC 29463

Counsel for Respondents

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Certificate of Counsel 1519



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December 16, 2015

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The Honorable Scott B. Suggs
Clerk of Court
Darlington County Court of Common Pleas
P.O. Box 1177
Darlington, SC 29540

Re: Kenneth L. Barr v. S.C. Workers' Compensation Commission, *et al.*
W.C.C. File No.: 1507304
CCP Case No.: 15CP160913

Dear Mr. Suggs:

Pursuant to Judge Burch's Temporary Restraining Order dated December 11, 2015 in the above-referenced case, we were instructed to advise your office and the Petitioner, Kenneth L. Barr, of any objection to the Temporary Restraining Order remaining in place until a hearing is scheduled. Please be advised that the Darlington County School District and the South Carolina School Boards Insurance Trust object to the December 11, 2015 Temporary Restraining Order remaining in place for any duration on the basis that the Court of Common Pleas does not have the authority or jurisdiction to review or vacate an order of the Workers' Compensation Commission or to otherwise restrain any proceedings before the Workers' Compensation Commission.

Yours very truly,

Kirsten L. Barr

KLB/cnd/les

cc: Eric Mayer, SC School Boards Insurance Trust
Christy Sandifer, Darlington County School District
Preston F. McDaniel, Esq.
Gerald Malloy, Esq.
Gary M. Cannon, S.C. Workers' Compensation Commission
The Honorable Alan T. Wilson, Attorney General of S.C.
6860\886\1-CCP re: objections to TRO



December 21, 2015

VIA EMAIL AND U.S. MAIL
Preston F. McDaniel, Esq.
McDaniel Law Firm
1315 Elmwood Avenue
Columbia, SC 29201

Re: Kenneth L. Barr v. S.C. Workers' Compensation Commission, et al.

Dear Mr. McDaniel:

I have been retained by the Workers' Compensation Commission. The Commission is willing to send Mr. Barr to a medical doctor, as you have requested in your many filings.

If you will agree to release the Commission from the Temporary Restraining Order, the Commission will agree to amend its directive to send Mr. Barr to a Ph.D. and send him to a physician instead.

Please give us some reasonable times as to when Mr. Barr could attend an evaluation by a medical doctor.

This should end the matter. Please advise immediately.

Sincerely yours,

A. Camden Lewis

ACL/kc

cc: Gary M. Cannon, Executive Director, S.C. Workers' Compensation Commission
Kirsten L. Barr, Esq.
Alan T. Wilson, Attorney General for the State of South Carolina
Gerald Malloy, Esq.

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February 1, 2016
DRAFTED 10:00 A.M.

VIA EMAIL ONLY - sdebruhl@wcc.sc.gov

Commissioner Scott Beck
c/o Shawnee DeBruhl
SC Workers' Compensation Commission
PO Box 1715
Columbia, SC 29201

RE: **Kenneth Barr v. Darlington County Schools**
WCC File No.: 1507304

Dear Shawnee:

I am surprised that Commissioner Beck feels that Charleston, South Carolina is reasonable times and places but true to my word I have just notified Mr. Barr to be present at the evaluation scheduled for tomorrow. I would ask Kirsten if at all possible because of the lateness of this if Dr. Pritchard happened to have anything open the rest of this week if we could reset it for that date. Barring that, like I said, Mr. Barr will be available in the morning for the transportation company to take him to the appointment.

Next I have received one letter sent to Dr. Pritchard and so I assume he has not been sent any other correspondence or any medical records and since 42-15-95 requires that I be informed ahead of time and provided a copy of all records and communications I will assume none has been sent. Also this is a request for an Independent Evaluation under 42-15-80.

Next since Dr. Pritchard being outside of the Florence area is not subject to subpoena to preserve our Constitutional Rights To Due Process Of Law I expect that my right to cross examination at the expense of the defendants will be preserved under the Administrative Procedures Act as is required by both the United States Supreme Court decisions and the Administrative Procedures Act.

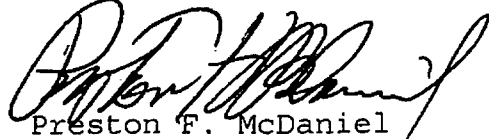
Ms. Shawnee DeBruhl

February 1, 2016

Page 2

By copy of this email I am notifying Kirsten Barr of our intent to comply with the Commissioner's Directive.

Respectfully Submitted,



Preston F. McDaniel
Co-Counsel for the Claimant

PFM/bre/abh

cc: Gerald Malloy, Esquire (via email gmalloy@bellsouth.net)
Kirsten L. Barr, Attorney (via email kbarr@trask-howell.com)

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February 18, 2016

VIA EMAIL - sdebruhl@wcc.sc.gov

AND US MAIL

Commissioner T. Scott Beck, Chairman
SC Workers' Compensation Commission
PO Box 1715
Columbia, SC 29201

RE: Kenneth Barr v. Darlington County Schools
WCC File No.: 1507304

Dear Commissioner Beck:

We received a Pre-Hearing Brief mailed on Friday, February 12th; another document designated as a Pre-Hearing Brief but which I can only assume would be a 1st Amended Pre-Hearing Brief that was mailed on Saturday, February 13th with an un-notarized Affidavit of Service attached, and via email we were served with what I will refer to as a 2nd Amended Pre-Hearing Brief and APA Submissions on February 16th.

You will recall that February 12th is a Friday; the 13th a Saturday; the 14th is a Sunday, and more importantly the 15th was a Federal holiday with no mail and we received via regular mail or email all three of these documents on Tuesday, February 16th. I am replying today and stating my objections to the submission of many of these documents on today, February 18th.

I will be submitting a Memorandum tomorrow in support of this request but as you are aware, SC Code §1-23-330 of the Administration Procedures Act provides that documentary evidence may be received but only where it will expedite the hearing and where the, "interest of the parties will not be prejudiced substantially".

The Memorandum which I will submit will set forth specific objections I have to the various listed documents but specifically as to four (4) reports that are being submitted as either medical opinion or expert reports. I specifically object to the submission of these documents in written form as it violates my client's constitutional rights to cross-examination. Based on the US Supreme Court decision in Richardson v. Perales, 402 U.S. 389, 91 S.Ct. 1420, 28 Law. Ed.2d 842 (1971), applying the Federal

Commissioner T. Scott Beck

February 18, 2016

Page 2

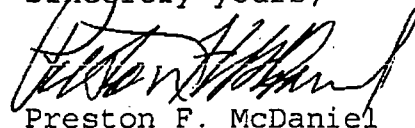
Administrative Procedures Act, after which our State Administrative Procedures Act was modeled, and the Social Security Administration Act provisions which specifically provide that the Hearing Officer and/or the Administration at the request of a party must issue Subpoenas for the experts to appear at a hearing instead of written reports so that the employee may exercise his rights to due process and cross-examination, I am hereby requesting pursuant to SC Code §42-3-140 that the Commission Subpoena these alleged medical or other experts and that the Commission, pursuant to §42-3-130, have those Subpoenas served by the County Sheriffs of the respective counties wherein the witnesses live. According to the Perales decision and the decisions of our Appellate Courts where we request live testimony to exercise our right to cross-examination, the submission of these written documents are highly prejudicial to my client and would deny my client the right of due process and specifically the fundamental due process right of the right to cross-examine these witnesses and shall not be admitted unless we are afforded that right at the hearing as is more fully set forth in the Memorandum which I will be submitting. SC Supreme Court law is directly in accord with this request.

I will place my objections on the Record but I also have numerous other objections to these documents and why they should not be submitted as is set forth in the Memorandum. I specifically object to the following documentary evidence being admitted as violating Mr. Barr's right to due process and the right to cross-examine adverse witnesses unless that right is granted at the hearing:

1. Dr. Randolph Waid, Ph.D.;
2. Dr. Mark Wagner, Ph.D.;
3. David H. Eagerton, Ph.D.; and
4. Dr. Paul Pritchard, M.D.

By copy of this letter, I am notifying and serving Ms. Barr with a copy of this request to be allowed to exercise the right of cross-examination and my Memorandum in support of the objections to the submissions all this supposed evidence. Of course, Ms. Barr may seek from you to avail herself of her remedies under 67-612 and 67-613 which she has not done through this point.

Sincerely yours,



Preston F. McDaniel

PFM/kth

cc: Gerald Malloy, Esquire (Via email and US Mail)
Kirsten L. Barr, Attorney (Via email and US Mail)

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February 19, 2016

VIA EMAIL: sdebruhl@wcc.sc.gov
Commissioner T. Scott Beck
SC Workers Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202

RE: Kenneth Barr v. Darlington County School District
WCC File No.: 1507304

Dear Commissioner Beck:

Attached for your edification is a copy of the case State v. Key, 277 S.C. 214 284 S.E.2d 781 (1981). By copy of this email I am forwarding a copy of this same case to Ms. Barr.

I look forward to seeing you at the hearing.

Sincerely yours,



Preston F. McDaniel

PFM/bre
Attachment

cc: Gerald Malloy, Esquire
Kirsten L. Barr, Attorney of Law

277 S.C. 214
Supreme Court of South Carolina.

The STATE, Respondent,

v.

Stewart H. KEY, Appellant.

No. 21607.

Nov. 30, 1981.

Defendant was convicted in the General Sessions Court, Charleston County, Richard E. Fields, J., of aggravated assault and battery, and he appealed. The Supreme Court, Littlejohn, J., held that: (1) testimony establishing that defendant, who was charged with aggravated assault and battery arising from a shooting incident at his convenience store, had threatened victim's associate two or three times with a gun and actually drew it on one occasion was admissible to show absence of mistake or accident as well as defendant's intent, and (2) medical report of victim's physician, which described physical path of the bullet but which did not include any subjective opinion or judgment, was admissible under Business Records as Evidence Act.

Affirmed.

West Headnotes (2)

[1] **Criminal Law**

Assault and battery

Criminal Law

Assault and battery

Testimony establishing that defendant, who was charged with aggravated assault and battery arising from a shooting incident at his convenience store, had threatened victim's associate two or three times with a gun and actually drew it on one occasion was admissible to show absence of mistake or accident as well as defendant's intent.

2 Cases that cite this headnote

[2] **Criminal Law**

Medical and hospital records

Medical report of victim's physician, which described physical path of the bullet but which did not include any subjective opinion or judgment, was admissible in prosecution for aggravated assault and battery under Business Records as Evidence Act. Code 1976, § 19-5-510.

4 Cases that cite this headnote

Attorneys and Law Firms

**782 *215 Wheeler M. Tillman and Richard J. Paul, Charleston Heights, for appellant.

Atty. Gen. Daniel R. McLeod and Asst. Attys. Gen. Lindy P. Funkhouser, Columbia, and Preston F. McDaniel, Florence, and Solicitor Capers G. Barr, III, Charleston, for respondent.

Opinion

LITTLEJOHN, Justice.

Defendant Stewart H. Key appeals his conviction of aggravated assault and battery arising from a shooting incident at his convenience store in Charleston County.

On June 27, 1980, Coca-Cola Company employees Clifford Williams (helper) and Sidney Dudley (in charge of truck) went to defendant's Shop and Save Curb Market to routinely reload the soft drink machine. Williams and the defendant exchanged some unfriendly words after Williams moved some produce baskets to make room for his handtruck. Williams proceeded to the drink machine and began inserting soft drinks, at which time a bullet from the defendant's .38 pistol struck him in the lower back of his leg above the ankle. Williams hobbled to a nearby gas station and later had the bullet removed from his foot at the hospital.

The defendant initially told the investigating policeman that some firecrackers had ignited. At trial, he admitted his gun had fired but contended that it discharged accidentally when he was attempting to pass between the opened Coke machine door and his grocery counter. He further suggested that the bullet had ricocheted off the concrete floor before striking Williams.

[1] Dudley testified that the defendant first pointed his pistol at Williams' back, but then lowered it towards the floor and fired it. Dudley further testified that during his eight years delivery to the store, the defendant had threatened two or three times with a gun and actually drew it on one occasion. This evidence of prior misconduct, objected to by defendant, at trial and here, for irrelevancy and lack of similarity to the present charge, was properly admitted to *216 show absence of mistake or accident as well as defendant's intent. *State v. Lyle*, 125 S.C. 406, 118 S.E. 803 (1923).

[2] The trial judge also allowed the State to publish to the jury the medical report of the physician who treated Williams' wound. The medical report contained the following language:

Following admission, the patient was taken to the operating room and ... the wound of the entrance was debrided. The track of the missile was followed down to the posterial aspect of the distal tibia. The track passed through the posterior **783 portion of the tibia and into the ankle joint. There was a fracture of the posterior lip of the tibia. The metal foreign body was removed from the ankle joint.

The defendant contends the quoted language above represents inadmissible opinion evidence since it reveals the bullet entered the leg and proceeded downward, thereby refuting

defendant's version that the gun fired accidentally and ricocheted upward off the floor to the leg.

This Court recently held that the admission into evidence of a business record under the Business Records as Evidence Act does not extend to subjective opinions or judgments included within that record. *Kershaw County Department of Social Services v. McCaskill*, S.C., 278 S.E.2d 771 (1981). The business record at issue, however, does not contain any subjective expressions of opinion and conclusion involving the exercise of judgment and discretion. *Peagler v. Atlantic Coastline Railroad Co.*, 234 S.C. 140, 107 S.E.2d 15 (1959). It represents a purely factual observation, i.e. the physical path of the bullet. It is no difference, for example, from a report describing the location of damage to a motor vehicle. Since the record does not include any subjective opinion or judgment, it was properly admitted into evidence.

For the foregoing reasons, the verdict of the trial court is

AFFIRMED.

LEWIS, C. J., and NESS, GREGORY and HARWELL, JJ., concur.

All Citations

277 S.C. 214, 284 S.E.2d 781

HAROLD E. TRASK
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February 22, 2016

Via Email Only

Commissioner T. Scott Beck
S.C. Workers' Compensation Commission
P. O. Box 1715
Columbia, SC 29202-1715

Re: Kenneth L. Barr v. Darlington County School District
W.C.C. File No.: 1507304
Carrier File No.: WCO16314
Date of Accident: May 21, 2015

Dear Commissioner Beck:

I am in receipt of Mr. McDaniel's "Memorandum of Objections to Specific Evidence Sought to be Introduced by Defendants at Hearing." We would respectfully request that his objections be overruled.

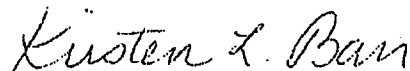
The report of Dr. Paul Pritchard, the neurologist who evaluated the Claimant after a Motion to Compel, was timely submitted pursuant to S.C. Code Reg. 67-612. Dr. Pritchard's deposition is currently scheduled for March 3, 2016. Any question the Claimant may have regarding the veracity of the medical records Dr. Pritchard reviewed in connection with his evaluation can be explored at that time.

The reports of Dr. Mark Wagner and Dr. Randolph Waid were also timely submitted pursuant to S.C. Code Reg. 67-612. Both Dr. Wagner and Dr. Waid are neuropsychologists. As you will recall, Dr. Wagner was appointed by the Defendants to perform neuropsychological testing on the Claimant in December 2015; however, after extensive litigation, the Order Compelling the Claimant's attendance at that evaluation was denied on the basis that Dr. Wagner is not a medical doctor. Shortly thereafter, the Claimant obtained his own neuropsychological evaluation with Dr. Nicholas Lind, who is similarly a neuropsychologist and not a medical doctor. Dr. Wagner and Dr. Waid were asked to review the Claimant's medical records, interpret Dr. Lind's neuropsychological test results, and give opinions as to whether the Claimant has brain damage, as alleged. Not only was the Claimant aware of Dr. Wagner's involvement in the case in December 2015, the Claimant's attorney was

also aware of Dr. Waid's involvement because Mr. McDaniel had a telephone conference with Dr. Waid in December 2015 regarding this fact. To date, Mr. McDaniel has made no attempt to schedule the *de benne esse* depositions of Dr. Wagner or Dr. Waid, nor has he made a motion to adjourn the hearing scheduled for February 24, 2016 for this purpose. Therefore, the Claimant's right to due process would not be infringed by the submission of these reports, as the Claimant has simply failed to exercise this right.

With respect to the report of Dr. Eagerton, a toxicologist who was asked to review and give opinions regarding the records of alleged exposure in this claim, particularly the MSDS sheets the Claimant has noticed with his APA submissions, this report was provided to Mr. McDaniel on February 15, 2016 via email. We would ask that the Commission, in its discretion, admit this report into evidence. Clearly, if Dr. Eagerton's report had been submitted by U.S. Mail on the tenth day prior to the hearing, February 14, 2016 (or even the eleventh or twelfth day prior), it would not have reached Mr. McDaniel's office until at least February 16, 2016, at the earliest. Therefore, there can be no credible allegation of prejudice by the Claimant based upon the date of receipt. To date, the Claimant has made no attempt to schedule the deposition of Dr. Eagerton; however, the Defendants have no objection should he wish to do so.

Yours very truly,



Kirsten L. Barr

KLB/cnd/les

Enc.

cc: Eric Mayer, SC School Boards Insurance Trust (email only)
Christy Sandifer, Darlington County School District (email only)
Preston F. McDaniel, Esq. (email/mail)
Gerald Malloy, Esq. (email/mail)

6860\886\l-Beck re: response to objection

Kim Hinkle

From: Cheeseboro, Barbara <BCheeseboro@wcc.sc.gov>
Sent: Thursday, November 17, 2016 5:10 PM
To: Kirsten Barr (Kbarr@trask-howell.com); 'cdively@trask-howell.com'
Cc: PRESTON@PFMCDLAW.COM; crystal@pfmcdlaw.com; Kim Hinkle; Rose Thielke; aham@pfmcdlaw.com
Subject: Kenneth Barr v. Darlington County Schools (WCC #1507304)
Attachments: order instructions (2).pdf

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11/17/16

REQUEST FOR PROPOSED ORDER

Please note these are general Order Instructions/Directives only. This document is not an Order. It is a request for a proposed Order. The undersigned reserves the right to modify or delete any portion of this document.

WCC File Number: 1507304
Date of Hearing: 08/31/2016
Place of Hearing: Florence County

CLAIMANT: Kenneth L. Barr
EMPLOYER: Darlington County School Districts
CARRIER: South Carolina School Board Self Insurers Trust Fund
Claimant's Attorney: Preston F. McDaniel

Defendant's Attorney: Kirsten L. Barr

DOI: 05/21/2015

AWW: \$611.61 **CR:** \$407.76

Court Reporter: Cora Bruton
131 Browning Court
Lexington, SC 29073
cocobk@windstream.net
(803) 397-0189

FINDINGS & DIRECTIVES

Ms. Barr, please draft the Order consistent with the below findings and directives and return to this office within 30 days:

1. Claimant alleges he sustained injuries to his brain and central nervous system as a result of repetitive exposure to volatile organic compounds (VOCs) arising out of and in the course and scope of his employment on 05/21/2015. (Drafting party to detail.)
2. Claimant had pre-existing conditions. (Drafting party to detail, to include Dr. Skinner's and claimant's testimony.)
3. Claimant underwent various evaluations and treatments for his alleged work related injuries. (Drafting party to detail.)
4. Various questionnaires and letters were submitted regarding claimant's alleged work related injuries. (Drafting party to detail.)
5. On 09/10/2015, in a questionnaire for the claimant, Dr. Marshall A. White of Neurology and Pain Management opined to a reasonable degree of medical certainty that claimant's fatigue, migraines and memory loss are due to the VOCs in the paint from work. (Claimant's p. 6)
6. On 11/23/2015, in deposition testimony, Dr. White testified he was not an expert and was not capable of making a determination regarding claimant's exposure to paint in his private practice versus his exposure at the School District. In addition, Dr. White testified that his opinions were based on his personal observations and the claimant's subjective complaints. (Drafting party to detail deposition testimony.)
7. On 12/16/2015 Dr. Nicholas A. Lind of Post Trauma Resources performed a neuropsychological evaluation for the claimant and opined findings of average to above average results, particularly pertaining to claimant's memory. (Drafting party to detail.)
8. On 02/02/2016 Dr. Paul B. Pritchard of MUSC performed an IME for the defendant and opined to a reasonable degree of medical certainty that claimant's neurological exam was normal and did not have findings to support a diagnosis of encephalopathy. In addition, Dr. Prichard opined he could not speak authoritatively on the potential for impairment from the various paint and other compounds to which claimant reports on the job exposure. (Drafting party to detail)
9. On 02/09/2016, in a questionnaire for the claimant, Dr. White opined to a reasonable degree of medical certainty that claimant's encephalopathic condition was caused by exposure to VOCs in his job. (Claimant's p. 1)
10. On 02/12/2016 Dr. Mark T. Wagner performed a neuropsychological evaluation based on the claimant's medical records as a result of claimant's counsel not allowing claimant to attend evaluation. Dr. Wagner opined there was no objective evidence in the examinations or reports provided to him that would support a Nero behavioral syndrome consistent with VOCs exposure. (Drafting party to detail.)
11. On 02/12/2016 Dr. L. Randolph Waid performed a neuropsychological evaluation based on the claimant's medical records. Dr. Waid opined there is no evidence to indicate that the claimant suffered the physical brain injury as a direct result of his employment with the Darlington County School District. (Drafting party to detail.)
12. On 02/14/2016 Dr. David H. Egerton of Presbyterian College opined to a reasonable degree of scientific and medical certainty that claimant's symptoms are not likely due to exposure to VOC's while he was employed by the Darlington County school District. (Drafting party to detail.)

13. On 02/19/2016, in deposition testimony, Dr. Lind testified claimant scored average or above average in memory tests for the normal population. (Drafting party to detail.)
14. On 03/03/2016, in deposition testimony, Dr. Pritchard testified he cannot be sure to a reasonable degree of medical certainty whether the headaches claimant reports were caused by his alleged exposure to VOCs at the Darlington County School District. (Drafting party to detail testimony.)
15. On 08/16/2016, in a questionnaire for the claimant, Dr. R. Joseph Healy opined to a reasonable degree of medical certainty that based on the history available to him at that time and his evaluation of the claimant, that his chronic headaches and fatigue are causally related to his exposure to VOCs in the commercial paint he was using between 2009 and 2015. (Drafting party to detail.)
16. On 09/27/2016, in deposition testimony, Dr. Healy testified he could not say with any certainty what portion of any pulmonary problems the claimant may have would be due to smoking versus other exposures. In addition, Dr. Healy testified he did not have an opinion, beyond speculation, regarding claimant's exposure in his employment with the school District versus the painting he did in his own private business as it relates to any pulmonary or neurological problems the claimant may have. (Drafting party to detail.)

Based on sworn testimony and a preponderance of the evidence, I hereby find:

1. Due to Dr. White's vacillating, I give little weight to his opinions.
2. I give greater weight to Dr. Healy's deposition testimony, than his questionnaire of 08/16/2016.
3. I give greater weight to the evidence as a whole over the testimony of Dr. Robert Bennett at the hearing. (Drafting party to detail testimony.)
4. Based on a preponderance of the medical evidence and sworn testimony, I cannot find that the claimant has met his burden of proof that he sustained injuries as a result of exposure to volatile organic compounds arising out of and in the course and scope of his employment. Therefore, claimant is not entitled to benefits under the Act.

INSTRUCTIONS: Please let our office know if you have difficulty obtaining a transcript or cannot complete the order within this timeframe. Draft the Order consistent with the above substance of the preceding Findings of Fact; however you may also add additional Findings of Fact consistent with the above ruling. The Order should include biographical information regarding the Claimant's work history and previous medical history, if relevant to the case.

If you need a transcript, order it *immediately* from the court reporter listed above. Provide a copy of the proposed Order to opposing counsel or *pro se* claimant before or at the same time one is submitted to the Commission.

When submitting the proposed Order to the Commission, please email only to bcheeseboro@wcc.sc.gov The Commission no longer requires hard copies of the proposed order unless the claimant is *pro se*.

Matters to include in the Order:

1. APA Submissions (if submitted)
2. Stipulations
3. Statement of the Case (contentions of the parties – stated concisely)
4. Evidence of the Case (synopsis of the evidence – including testimony and medical reports)
5. Findings of Fact [numbered] (Do not delete any of the above findings.) The prevailing party may add to support the decision, except regarding credibility unless you have been so instructed.
6. Conclusions of Law (cite applicable statutory sections and case law)
7. Award
8. Do not address credibility in the Order, unless it has been addressed in the preceding Order Instructions.

The Honorable R. Michael Campbell, II
Commissioner
South Carolina Workers' Compensation Commission
1333 Main Street
Suite 500
Columbia, South Carolina 29201
(803) 737-5678

Order Instructions e-mailed to parties on November 17, 2016.

January 19, 2017

VIA E-MAIL AND U.S. MAIL

The Honorable R. Michael Campbell, II
Commissioner
South Carolina Workers' Compensation Commission
1333 Main Street
Suite 500
Columbia, South Carolina 29201

**RE: Kenneth Barr v. Darlington County Schools
WCC File No.: 1507304**

Dear Commissioner Campbell:

I had talked with my co-counsel, Preston McDaniel, back in December about sending this Request for Reconsideration; however, it got delayed since I was involved with the Dylann Roof trial in Charleston for most of December and part of this month. On behalf of our client, I would respectfully request reconsideration prior to the issuance of a formal order. I am sure that Ms. Barr will confirm and as you may already be aware, any Judge or Commissioner's decision is subject to reconsideration prior to the time that he enters his final formal order in the matter. If anybody disagrees, I will be glad to send you Case Law to that effect.

In that regard, based upon my review of your Notes for Decision and my knowledge of the evidence presented to you, I would respectfully and kindly ask for reconsideration of your decision and specifically for the following reasons:

1. I do not see in your Notes for Decision any reference to the testimony and evidence presented from Mr. Barr, his supervisor, the district in reference to the facts as to the development of Mr. Barr's severe problem with headaches.

Based upon a review of Mr. Barr's testimony, you will find that he did not have a problem and there is no history of any problem of continual and severe headaches prior to the time that he went to work for the school district in May of 2009. (APA p. 207).

As established by the medical records, approximately one year later June 15, 2010 (APA p. 170), he first went for medical treatment to his longtime family doctor, Dr. Chapman, and reported with problems of fatigue and headaches for a two to three-week period (APA p. 170).

Approximately three months later and after medications from Dr. Chapman stopped working, he reported back to Dr. Chapman with a four-week history of continual headaches,

fatigue, dizziness, nausea and balance issues. At that time he had severe headaches that were unrelenting (APA p. 167, 169). He was taken out of work (APA p. 169) and then referred by Dr. Chapman after several visits to Dr. Skinner. Dr. Skinner began treatment for unrelenting headaches which could not be corrected by medications with an ever-increasing height and level of care and the evidence establishes that he has been under treatment for unrelenting headaches ever since seeing Dr. Chapman in August 2010.

It is undisputed that there two types of effects from exposure to VOC's in commercial paints: those include, "acute" and "chronic" effects of exposure to commercial paints. (Two points – 1) the symptoms Mr. Barr was exhibiting from the very beginning specifically August/September, 2010 when he started seeing doctors for headaches were specifically the acute effects of VOC exposure: MSDS sheets, "headache, dizziness, nausea and loss of coordination". See ex. APA p. 49); and 2) there is no medical or professional expert opinion that challenges the acute effects of exposure

2. While your notes address one of the bases that we submitted as a basis for Mr. Barr obtaining benefits as having sustained a compensable injury or repetitive trauma and/or occupational disease, we filed on several different bases upon any of which you could award benefits. We did request benefits for an occupational disease resulting in specific physical injury to the brain in the form of a chemical encephalopathy. However, we also filed for benefits on the simple basis that due to his continual and repeated exposure to VOC's in the workplace that this repeated daily exposure resulted in him developing on a daily and repetitive basis severe headaches due to the exposure requiring him to take analgesics and other medication to try to control the headaches. (PHB 4e and Dr. Healy p. 219-220). In other words, the disabling factor is his headaches and we were requesting benefits for treatment specifically for the headaches whether or not there was actually any physical injury to the brain.

I do not see a decision specifically on this basis for an Award of TT and medical. You will recall at the hearing that we requested and we felt that the most appropriate Award at this time would be to find that Mr. Barr's problems with severe chronic headaches stemmed from his exposures on the job and that he be placed on temporary total and provided medical care to see if we could resolve and/or control the headaches and allow him to return to work. Based specifically on the testimony and evidence from Dr. Healy who felt that the Claimant has not reached maximum medical improvement in reference to his severe disabling headaches. We were not requesting an Award for total and permanent disability.

3. While it is referenced, I would ask you to look at the evidence again and I do not believe you will find that after he began working with the school district, any history of him having worked to any degree whatsoever with outside painting. Also, it is undisputed that the problems with VOC exposure is directly in relationship to exposure to commercial paints, not water based residential house paints. You will recall that the vast majority of his history as a painter was that of being a local house painter and that his only other exposure to commercial paints was at the nuclear plant and in reference to which he meticulously went through the various safety equipment with which he was provided at the nuclear plant versus the safety equipment with which he was provided through the school district.

4. Again, we would note for your consideration the fact as set out in the Record specifically when the case was set before Commissioner Beck that we requested that the two reports by Dr. Wade and Dr. Wagner be excluded because they had no personal knowledge nor did they actually see the Claimant and therefore their opinions cannot be admitted as expert opinion on the basis of personal knowledge. The only other way that they can properly be admitted would be on the basis of a properly phrased hypothetical question and that is not established by the Record. The reports are hearsay and the submission of those reports were obviously highly prejudicial to the Claimant. Also, neither of these are medical doctors nor

toxicologists and only their opinions as psychologists could be considered as expert opinion evidence or their opinions on the tests results being considered by a medical doctor in expressing a medical opinion. However, and most importantly, both psychologists state in their reports that Mr. Barr's disabling condition is his severe headaches (APA pp. 420 and 446) and the only medical opinion one way or the other that his headaches are caused by his work and exposure to VOC's is from Dr. Healy. (p. 220). There is no contrary medical opinion evidence and we specifically asked for benefits for his severe disabling headaches.

You will also note our objections to any of these reports coming into evidence because they violated Mr. Barr's right to cross-examine these medical and other experts on the Record.

In reference also to the report of the toxicologist upon which you relied, Dr. Eagerton, Ph.D. you note in your notes specifically that he expressed both an expert opinion and a, "medical" opinion (Note #12). This toxicologist, as noted and as objected to as to his report, is not a medical doctor and he is totally unqualified to express a medical opinion. It is inappropriate and he has no right to express such an opinion. Most respectfully, you cannot accept or rely on his report as a medical opinion. You may recall that Ms. Barr repeatedly objected at the hearing to the submission of any medical opinion by Dr. Barrett who is also a toxicologist, not a medical doctor.

Next, in reference to the report of Dr. Pritchard, while we noted numerous objections to his reports, more importantly, Dr. Pritchard in his report, only stated the opinion that in his opinion as an expert in the area of neurology that Mr. Barr did not have an encephalopathy. I would ask you to please review his report and you will find that he deferred to an occupational medicine expert and expressed no opinion, and I want to reiterate no opinion, as to the cause of Mr. Barr's continuing, unrelenting, disabling headaches.

Quoting from his assessment:

"1. Report of headaches and cognitive impairment following alleged exposure to VOC's (Volatile Organic Compounds) through his job as a painter for the Darling County School District. By history, they are consistent with chronic daily headaches ...

5. I cannot speak authoritatively on the potential for impairment from the various pain and other compounds to which he reports on the job exposure ...

... I would recommend that he be evaluated by an occupational medicine physician who has training and experience in toxicology."

5. Finally, I would ask Your Honor to consider specifically the factual evidence from Mr. Barr's supervisor, Mr. Larry Stagner, in May in his report of May 12, 2016 (APA p. 199) in which he goes over taking Mr. Barr out of work pursuant to Dr. White's instructions and then consider Dr. White's experience with Mr. Barr over a three-year period and then consider the fact that when this whole case began all that we ever wanted was what Dr. White recommended in May of 2015 which was that Mr. Barr's problems with headaches, fatigue and memory were being caused by and were related to his exposure to VOC's in the workplace. The only thing, and I would like to reiterate, the only thing that Dr. White did at that time and which Mr. Barr wanted in May of 2015 was to be provided with medical care and to be placed on temporary total disability in hopes that he would be able to get treated and get back to work either with the school district or in some capacity.

I hope that after review of all of the factual evidence from both the Claimant, his supervisor and the way his condition developed, (i.e., unrelenting severe headaches starting a

year after his exposure began to commercial VOC's in the commercial paints which he was using), that you will find that Mr. Barr is entitled to the benefits which we really want and request at this time which is simply to have him placed on temporary total disability and provided with medical care in hopes that we can correct the situation, his disabling headaches and allow him to return to work either with the school district as a painter or to return to work in some capacity. We want nothing more and nothing less.

In conclusion, there is absolutely no medical opinion evidence in the Record contrary to that of Dr. Healy that Mr. Barr's severe chronic headaches are related to and caused by his exposure to VOC's in his job as a commercial painter with the District. If I am wrong, I am sure Ms. Barr will point that out.

By copy of this letter, I am forwarding a copy to Ms. Barr noting that I, on behalf of our client and co-counsel, am asking for reconsideration prior to your formal order. It was a pleasure appearing before you and I look forward to your decision after consideration of this request.

With kind regards, I am,

Sincerely yours,

Gerald Malloy

cc: Preston F. McDaniel, Esquire (via email preston@pfmcdlaw.com)
Kirsten Barr, Esquire (via email kbarr@trask-howell.com)

Preston McDaniel

From: Greta Elliotte <gelliotte@bellsouth.net>
Sent: Thursday, January 19, 2017 3:22 PM
To: Cheeseboro, Barbara; Kirsten Barr
Cc: Kim Hinkle; Chrystal Dively; Gerald Malloy; Denise Chavis; PRESTON@PFMCDLAW.COM
Subject: Re: Kenneth Barr v. Darlington County Schools (WCC #1507304)
Attachments: Ltr. to Comm Campbell.docx

Good afternoon Barbara,

Please see Senator Malloy's attached letter to Commissioner Campbell. Hard copy will follow via U.S. mail.

thanks!

Greta R. Elliotte
Paralegal

Gerald Malloy
Attorney at Law
P.O. Box 1200
Hartsville, South Carolina 29550
843-339-3000
843-332-4646 (Facsimile)

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Preston F. McDaniel

Matthew C. Robertson

Telephone (803) 771-7211

Facsimile (803) 252-0709

Drafted: September 15, 2017

September 18, 2017

VIA EMAIL ONLY: bcheeseboro@wcc.sc.gov
Commissioner Mike Campbell
SC Workers Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202

RE: Kenneth Barr v. Darlington County School District
WCC File No.: 1507304

Dear Commissioner Campbell:

At long last I have had an opportunity to review the Order and would place the following objections to the proposed Order as written.

First, under the Statement of the Case, in setting forth the position and the request for benefits (and also an issue on which Mr. Malloy requested further consideration) there is no reference to the fact that our request for benefits was pled in the alternative. As I stated at the hearing on the Record, Dr. White the original treating neurologist, before any lawyers were involved, was of the opinion that Mr. Barr had sustained an encephalopathy due to his exposure, that his condition was permanent and would only worsen. However, Dr. Healy, the neurologist who had treated him for well over a year at the time of the hearing after we were able to get insurance coverage, was of the opinion that Mr. Barr is not at maximum medical improvement and that he has severe headaches as opined by all doctors involved (not a contested fact) that were causally related to the exposure to VOCs. He is the only doctor to address specifically that the headaches were causally related. Based on this we pled in the alternative for a finding that he was not at maximum medical improvement, that his continuing severe headaches were either directly caused by or were aggravated and caused to become symptomatic and caused by his daily exposure to the volatile organic compounds. That position is not set out in the Statement of the Case, nor again is it actually addressed in your Notes. We would ask that the

Order be rewritten to note our position that the Claimant is not at maximum medical improvement and place him under Dr. Healy's care for his severe disabling headaches as being causally related to his exposure to volatile organic compounds on the job. All of the evidence in the Record is that VOCs can cause headaches acutely.

In reference to the Evidence Summary under the Claimant's Testimony on p. 4 of the Order, in reference to the Claimant's former business operated under "Kenny's Painting", the sentence concerning the continual operation of Kenny's Painting does not properly reflect the testimony or evidence in that after going to work for the District, Mr. Barr testified that he only did a couple of jobs on the side. As written, the Order would indicate that he continued to operate his business fully and on a continual basis, and that is not the case.

In reference to the work history, on p. 4 there is no reference to the fact that he first received his training as a painter when he worked for the nuclear plant where he was exposed to "commercial" paints for the only other time in his career as a painter and that while at the nuclear plant, he wore long sleeves, full length rubber gloves up to his elbows and at all times wore a full face respirator and that on some occasions and in some locations it was air supplied. Also, on that same page in reference to the painting work at the school, the Defendants gloss over the fact, which I know Your Honor recognized, that we are talking about at the School District the use of, "commercial" paints as we were talking about at the nuclear plant. However, in Kenny's Painting and in all residential painting, you only use latex paints because they have a much lower Volatile Organic Compound content; as both toxicologists noted. The MSDS Sheets apply to commercial paints. This issue needs to be made clear because it is critical to an understanding of the exposure to, "commercial" paints versus "residential" paints. Again, at the bottom of p. 4 the Defendants try to imply exposure through Kenny's Painting through use of a sprayer and the actual amount of work done with a sprayer in that business versus after going to work for the District. Here again this is why the only couple of jobs with Kenny's Painting on the side after working for the District must be fully set out in fairness to all parties.

In reference to Dr. Pritchard, his report and deposition, the Defendants quote various parts of the deposition and then summarize various parts of the deposition. In fairness to both parties, the Order should be amended to provide that Dr.

Pritchard in his report stated that,

"I cannot speak authoritatively on the potential for impairment from the various paint and other compounds to which he reports on the job exposure." He goes on to state, "as I explained to Mr. Barr and his wife, I would recommend that he be evaluated by an occupational medicine physician who has training and experience in toxicology." (D. APA, p. 405).

It should be added as a quote from p. 78 of his deposition quoting:

"Q: In reference to painters under the National Institute of Health and the NIOSH report that I provided you and which has been put into evidence, there are certain occupations that over 50% of the body exposure is thought to come from absorption through the hands and through the skin.

A: I mean, I saw that. I don't have personal knowledge or expertise that would let me know that."

(Depo., p. 78, l. 22 - p. 79, l. 4).

"Q: And then I guess -- of course, this really turns on, you know, to a large extent on his exposure levels. Mrs. Barr's and their position, is he didn't have any. And to a large degree, it is whether or not he had some kind of a physical brain injury and/or if his problems were -- headache problems being caused by his exposure to volatile organic compounds, whether or not he was exposed to them; is that a fair statement?

Witness:

Yeah. Well, I can't testify. I see these MSDS Sheets, and I didn't read

them. What I don't know is exactly what paint or thinner he was exposed to and when and for how long. And I don't know any of that.

(Depo., p 75, ll. 8-15; ll. 19-23).

At the end of the summarization of this evidence, in the proposed Order they summarize that he had testified to a reasonable degree of medical certainty that there was no causal relationship to Mr. Barr's employment at the School District. However, they failed to note that he again confirmed that:

"Q: Did you not testify that you did not have enough information about his exposures?

A: What I believe I said was that I am not knowledgeable about how much he had when, and I am not a toxicologist. I don't want to overstate my qualifications."

(Depo., p. 106, ll. 17-22).

While there are numerous objections that could be made to the recitation of the evidence from the other doctors as reviewed in the Order, briefly and specifically as to Dr. Mark Wagner, the sentence that the Claimant refused to see Dr. Mark Wagner is wrong in that this Commission issued an Order that the request for an evaluation by Dr. Mark Wagner, Ph.D. was inappropriate and was not allowed for under the Act or law because he is not a medical doctor.

As to Dr. David Eagerton, as noted as a specific objection in addition to his report being hearsay and not admissible as violating the Claimant's due process rights, Dr. Eagerton per everything in the Record is not a medical doctor but yet the Defendants quote his opinion as stating that, "within a reasonable degree of scientific and medical certainty". The specific reference to this opinion as being a medical opinion should be stricken as Dr. Eagerton is not qualified and is not a medical doctor, and cannot express a medical opinion.

As to the Findings of Fact, the Directives contain as to each of those, that the drafting party is to detail those and

the Defendants do that in the light most favorable to the Defendants. They prevailed and the Claimant cannot complain. However, the Claimant would respectfully point to the Commissioner that a previous request had been made for Reconsideration, and particularly, on the issue of whether or not the Claimant's severe headaches are causally related directly or indirectly to his exposure and the finding by Dr. Healy that he is not at maximum medical improvement; which is not addressed.

In addition, numerous objections have been made and the Claimant would point out the following specific Findings that the Commissioner should reconsider or should be stricken from Findings.

Specifically in reference to Directive #10, the Directive does not point out that Dr. Wagner, Ph.D. is not a medical doctor and that this Commission specifically ruled that the Claimant did not have to attend an evaluation by Dr. Wagner because he is not a medical doctor. While it is true that the Claimant initially objected on this basis that they had no right to any evaluation by a non-medical doctor and on the basis that the evaluation was not at reasonable times and places and would attend a neuropsychological testing performed locally as ordered by Dr. White after the Defendants requested such testing, the reason the Claimant did not attend an evaluation by Dr. Wagner, Ph.D. is because of the Order of this Commission that he did not have to attend such an evaluation.

As to Directive #12, as set forth above Dr. Eagerton is not a medical doctor and it is inappropriate for the Commission to consider any opinion issued by him in that regard, which "medical" is specifically set out as such in issue #12.

In reference to Directive #16 and the basis for decision #2, again this is why it is critical in fairness to both parties as to the citation of the Claimant's testimony that he only performed a couple of jobs after he went to work for the School District in his private business he had previously operated and that he was not exposed to commercial paints in that residential painting business.

In reference to Dr. Healy's testimony and in reference to Directive #16, Dr. Healy reaffirmed in his testimony that he stood by his opinions as expressed in his response to the Questionnaire. He also reaffirmed, particularly based on the previous history prior to 2009 of no continual treatment for

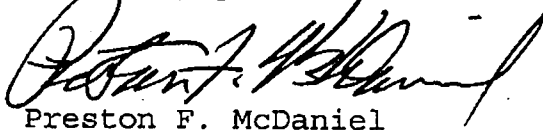
headaches and that within one (1) year after going to work for the School District, being under constant care and ever-increasing care for severe headaches, that that strengthened his position that the VOCs were a big component of what was wrong with him and causing his headaches. (Depo Tr., p. 39, l. 8 - p. 41, l. 23).

The Claimant would make those objections to the Order as written and submitted and would again respectfully request reconsideration.

By copy of this email, I am notifying Ms. Barr of these objections to the proposed Order as written and look forward to hearing from you as to your directive, both as to the proposed Order and as to reconsideration.

The Claimant would also welcome a conference with Your Honor if you would be agreeable over the various issues in this voluminous Record.

Sincerely yours,



Preston F. McDaniel

PFM/kth

cc: Gerald Malloy, Esquire (via email only) (3)
Kirsten L. Barr, Attorney (via email only)

Kim Hinkle

From: Kim Hinkle <kim@pfmcdlaw.com>
Sent: Monday, September 18, 2017 3:27 PM
To: Barbara Cheeseboro (bcheeseboro@wcc.sc.gov)
Cc: Kirsten L. Barr (kbarr@trask-howell.com); Gerald Malloy (gmalloy@bellsouth.net); Greta Elliotte (gelliotte@bellsouth.net); Denise Chavis (cdenisec@bellsouth.net); 'lsanchez@trask-howell.com'
Subject: Barr v. Darlington County School District; WCC File No. 1507304
Attachments: SCAN17091815100.pdf

Importance: High

The attached is being sent to you at the request of Preston F. McDaniel, Esquire.

Kimberley T. Hinkle, Senior Paralegal
to Preston F. McDaniel, Esquire
McDaniel Law Firm
1815 Elmwood Avenue
Columbia, SC 29201
T: 803-771-7211
F: 803-252-0709

Please consider the environment before printing this email.

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Kim Hinkle

From: Kirsten Barr <kbarr@trask-howell.com>
Sent: Monday, September 18, 2017 6:25 PM
To: Barbara Cheeseboro; kim@pfmcdlaw.com; PRESTON@PFMCDLAW.COM
Cc: Linda Sanchez; Chrystal Chassereau
Subject: Fwd: kenneth barr 2nd amended proposed order
Attachments: kenneth barr 2nd amended proposed order (65.2 KB); ATT00001.htm

Barbara,

In light of Mr. McDaniel's arguments that the Claimant may be entitled to benefits for headaches unrelated to his allegations of brain damage, I have modified the findings and conclusions to further clarify that the headaches were not caused by any injury by accident, repetitive trauma, or occupational disease based upon the greater weight of the evidence, including the deposition testimony of Dr. Healy. Of course, I am still happy to make any additional changes the Commissioner requires.

Best,
Kirsten

Sent from my iPhone

Begin forwarded message:

From: Kirsten Barr <klbarr@comcast.net>
Date: September 18, 2017 at 6:19:50 PM EDT
To: Linda Sanchez <LSanchez@trask-howell.com>
Cc: Giver Of Life <Kbarr@trask-howell.com>
Subject: kenneth barr 2nd amended proposed order

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Preston F. McDaniel

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Matthew C. Robertson

Facsimile (803) 252-0709

September 19, 2017

VIA EMAIL ONLY: bcheeseboro@wcc.sc.gov

Barbara Cheeseboro
SC Workers' Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202

RE: **Kenneth Barr v. Darlington County School District**
WCC File No.: 1507304

Dear Barbara:

I cannot believe Ms. Barr submitted this second amended Order without further specific direction of the Commissioner. Based on that submission we are renewing our request for reconsideration and/or at least a conference over this case. Please pass this along to the Commissioner and our request for at least a conference.

Mr. Malloy had originally requested reconsideration based on the fact that the Commissioner, in his Notes for decision, did not address our alternative pleading for an Award that his headaches were caused by his repetitive exposures to VOC's in the workplace; to place him on temporary total disability; and under the care of Dr. Healy in whose opinion he was not at maximum medical improvement. We heard nothing of that request.

We then received a proposed order and we replied with our objections; one of which was that there was no reference to our alternative request based on his headaches being caused or caused to become symptomatic based on his exposure to VOC's.

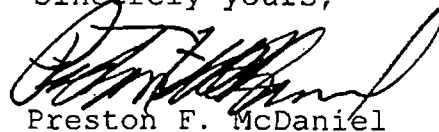
At 4:44 pm yesterday I received a revised Order amending it to show our alternative basis for requesting benefits. I have absolutely no problem with that amendment, in that that properly reflects our position at the Hearing.

However, at 6:25 pm to my knowledge without any further direction from the Commissioner, Ms. Barr submits a second proposed amended order and I don't know how to put this, basically filling in the gaps or making unrequested findings and conclusions that the headaches were not caused by any injury by accident, repetitive trauma or occupational disease or in other words making findings that have not been made according to what Mr. Malloy and I know from our reading of the Commissioner's directives.

Barbara Cheeseboro
September 19, 2017
Page 2

By copy of this email I am notifying Ms. Barr of this request for a conference, which conference I would like to be in person if at all possible, at which we can discuss all issues in reference to the Proposed Order and/or reconsideration by the Commissioner prior to a formal Order being issued.

Sincerely yours,



Preston F. McDaniel
Gerald Malloy
Attorneys for the Claimant

PFM/rmt

cc: Gerald Malloy, Esquire (Via Email only: gmalloy@bellsouth.net)
Kirsten Barr, Attorney of Law (Via Email only: kbarr@trask-howell.com)

Rose Thielke

From: Rose Thielke <rose@pfmcdlaw.com>
Sent: Tuesday, September 19, 2017 4:06 PM
To: bcheeseboro@wcc.sc.gov
Cc: kbarr@trask-howell.com; gmalloy@bellsouth.net; gelliotte@bellsouth.net; 'Denise Chavis'
Subject: Kenneth Barr v Darlington County School Dist
Attachments: SCAN17091916070.pdf

The attached letter is being sent at the request of Preston McDaniel.

Rose Thielke
McDaniel Law Firm

GERALD MALLOY
ATTORNEY AT LAW

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POST OFFICE BOX 1200
HARTSVILLE, SOUTH CAROLINA 29551

September 19, 2017

VIA E-MAIL AND U.S. MAIL

Commissioner R. Michael Campbell, II
SC Workers' Compensation Commission
1333 Main Street, Suite 500
Columbia, SC 29201

Re: Kenneth Barr v. Darlington County Schools
WCC File No.: 1507304

Dear Commissioner Campbell:

In reference to the proposed order submitted to you, I would renew my Request for Reconsideration of your Decision which as far as I know, has never been addressed. I would specifically request reconsideration based on the fact that Your Honor's notes for decision do not reflect any consideration of our request that his severe disabling headaches be found to be causally related to the exposure to VOCs, that he be found not at maximum medical improvement and that be placed under the care of Dr. Healy for further treatment.

By copy of this email, I am notifying Ms. Barr of this communication concerning reconsideration.

With kind regards, I am,

Sincerely yours,


Gerald Malloy

GM/gre

cc: Preston McDaniel, Esquire
Kirsten Barr, Esquire

Kim Hinkle

From: Greta Elliotte <gelliotte@bellsouth.net>
Sent: Tuesday, September 19, 2017 12:03 PM
To: Barbara Cheeseboro
Cc: Kirsten Barr; Preston Mcdaniel; Kim Hinkle; Gerald Malloy
Subject: Kenneth Barr v. Darlington County Schools #1507304
Attachments: barr ltr to comm 9-19-17.pdf

Hi Barbara,

Please see attached letter from Sen. Malloy for Comm. Campbell. By copy of this e-mail we are providing our co-counsel, Preston McDaniel, and Defendant's attorney, Kirsten Barr with a copy of this correspondence.

thank you,

Greta R. Elliotte
Paralegal

Gerald Malloy
Attorney at Law
P.O. Box 1200
Hartsville, South Carolina 29550
843-339-3000
843-332-4646 (Facsimile)

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
VOTE SHEET PREPARED PURSUANT TO R.67-709 (E)(2)

Kenneth Barr v Darlington County Schools- Darlington
SCWCC : 1507304
COMMISSIONER; Mike Campbell

Appellant: Preston F. McDaniel

Respondent: Kirsten L. Barr

Appellate Panel: Panel A
Publish Comments: Y/N
Separate Opinion: Y/N

Order assignment due in 30 Days
Commissioner:
Attorney:

AFFIRM

REVERSE

AFFIRM with Amendments:

VACATE

AFFIRM in Part/REVERSE in Part

REMAND

Before me dated: 2/20/2018
Columbia, SC

Signed: 
Commissioner

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
VOTE SHEET PREPARED PURSUANT TO R.67-709 (E)(2)

Kenneth Barr v Darlington County Schools- Darlington
SCWCC : 1507304
COMMISSIONER: Mike Campbell

Appellant: Preston F. McDaniel

Respondent: Kirsten L. Barr

Appellate Panel: Panel A
Publish Comments: Y/N
Separate Opinion: Y/N

Order assignment due in 30 Days
Commissioner: TAYLOR
Attorney:

AFFIRM

REVERSE

AFFIRM with Amendments:

VACATE

AFFIRM in Part/REVERSE in Part

REMAND

Before me dated: 2/20/18
Columbia, SC

Signed: 
Commissioner

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
VOTE SHEET PREPARED PURSUANT TO R.67-709 (E)(2)

Kenneth Barr v Darlington County Schools- Darlington
SCWCC : 1507304
COMMISSIONER: Mike Campbell

Appellant: Preston F. McDaniel

Respondent: Kirsten L. Barr

Appellate Panel: Panel A
Publish Comments: Y/N
Separate Opinion: Y/N

Order assignment due in 30 Days
Commissioner: Taylor
Attorney: Barr

AFFIRM

REVERSE

AFFIRM with Amendments:

VACATE

AFFIRM in Part/REVERSE in Part

REMAND

Before me dated: _____
Columbia, SC

Signed: _____
Commissioner

McDANIEL LAW FIRM
ATTORNEYS AND COUNSELORS AT LAW
1315 ELMWOOD AVENUE
COLUMBIA, SOUTH CAROLINA 29201

Proudly representing injured workers
for over 30 years.

Preston F. McDaniel
Matthew C. Robertson

Telephone (803) 771-7211
Facsimile (803) 252-0709

April 10, 2018

Via Email (rgsmith@wcc.sc.gov) & US Mail
Commissioner Aisha Taylor
SC Workers' Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202

URGENT
IMMEDIATE ATTENTION
REQUESTED

RE: Kenneth L. Barr v. Darlington County School District
WCC File No.: 1507304

Dear Commissioner Taylor:

I am in receipt of a copy of the proposed Order that the Full Commission asked Ms. Kirsten Barr to draft. I strongly object to this proposed Order being considered as it goes far beyond the directions given by the Full Commission for the proposed Order.

In the Request for the Proposed Order the Commission simply "AFFIRMED" the findings of facts, conclusions of law and the decision of the hearing Commissioner as written.

The proposed Order contains a, "Statement of the Case" that is not accurate. Then after appropriately referring to the Findings of Fact and setting those out as made by the hearing Commissioner and the Conclusions of Law as made by the hearing Commissioner and the Order part of the decision rendered by the hearing Commissioner and the issues raised on appeal, after that instead of simply stating that the Record, the Order, the briefs and arguments were reviewed and affirmed as written, the proposed Order contains an evidentiary summary. More importantly it then goes on to contain what is captioned as a, "Discussion" and makes separate legal conclusions that read like either an opinion on the law and facts that would be issued by the Court of Appeals or Supreme Court or like a brief argued to the Supreme Court. It then goes on to add another separate section entitled, "Conclusion" and contains a separate set of Findings of Fact.

As you are aware, under Commission Regulation 67-709(E) if the Commission modifies either the Findings of Fact or Conclusions of Law or the hearing Commissioner's Decision, the Commission Panel is required to set out those modifications and record those Findings of Fact and Conclusions of Law on the vote sheets.

In addition, South Carolina law requires that the Commission make it's "own" findings of facts and conclusions of law on the issues raised: §42-17-40 and 1-23-350.

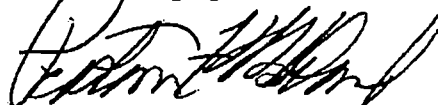
Again, most respectfully in this case the Full Commission simply voted to "Affirm" the hearing Commissioner's decision as written. There is no Findings of Fact and/or Conclusions of Law on any of the issues otherwise on the proposed order request. The parties are required to be given notice of any separate Findings of Fact or Conclusions of Law or modifications of a decision.

Finally, as the Commission knows, South Carolina case law and statutory law require that the Commission make detailed Findings of Fact and Conclusions of Law that are sufficiently detailed and definite enough to allow for Judicial Review.

On behalf of Mr. Malloy and myself, I would appreciate a conference call to discuss regarding the submission of a revised Order in accordance with the Commission's decision and direction or the opportunity to simply provide the Commission with a proposed Order that is in accordance with it's direction. We will have enough issues to deal with on Appeal and we do not need to add to those.

By copy of this email, I am notifying Kirsten Barr and my co-counsel, Gerald Malloy of this communication and request.

Sincerely yours,



PRESTON F. MCDANIEL

PFM/smk
Enclosures

cc: Kirsten Barr (Via email kbarr@trask-howell.com) & US Mail)
Gerald Malloy (via email-3)

Sabrina Kelley

From: Sabrina Kelley <sabrina@pfmcdlaw.com>
Sent: Tuesday, April 10, 2018 9:31 AM
To: 'Smith, Renee'
Cc: 'kbarr@trask-howell.com'; Gerald Malloy (gmalloy@bellsouth.net); gelliotte@bellsouth.net; Denise (cdenisec@bellsouth.net)
Subject: Kenneth Barr URGENT
Attachments: SCAN18041009330.pdf

Importance: High

Please see attached letter from Preston McDaniel.

Thanks,

Sabrina M. Kelley, Paralegal to
Preston F. McDaniel
McDaniel Law Firm
1315 Elmwood Ave
Columbia, SC 29201
Telephone : (803) 771-7211
Fax : (803) 252-0709

Please "Reply to All" when responding

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

MAR 07 2019

SC Court of Appeals

APPEAL FROM SOUTH CAROLINA
SC Workers' Compensation Commission
Appellate Panel

Appellate Case No.: 2018-001237

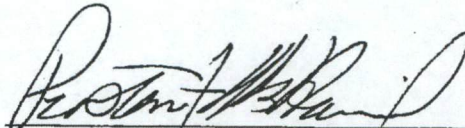
Kenneth L. Barr, Claimant, Appellant,

v.

Darlington County School District, Employer,
and SC School Boards Insurance Trust,
Carrier, Respondents.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal
contains all material proposed to be included by any of the
parties and not any other materials.



Preston F. McDaniel, Esquire
MCDANIEL LAW FIRM
1315 Elmwood Avenue
Columbia, South Carolina 29201
(803) 771-7211

and

Gerald Malloy, Esquire
MALLOY LAW FIRM
Post Office Box 1200
Hartsville, South Carolina 29551
(843) 339-3000

Attorneys for Appellant

3/1, 2019