

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Commissioners Melody L. James, T. Scott Beck, and Aisha Taylor

W.C.C. File No. 0908371

Timothy Hannah, Employee, Claimant Respondent,

v.

MJV, Inc./Butler Trucking, Employer, and
Palmetto Timber S.I. Fund c/o

Walker, Hunter & Associates, Inc., Carrier Appellants.

RETURN TO PETITION FOR REHEARING

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SC Court of Appeals

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Pursuant to Rules 221, 240 and 267 SCACR, Respondent, Timothy Hannah, by undersigned counsel, hereby responds in opposition to Appellants' petition to this Court for rehearing of its June 12, 2019 Opinion, No. 2019-UP-213, as follows:

ARGUMENT

I. REHEARING WOULD CAUSE UNWARRANTED DELAY AND WOULD DEPRIVE MR. HANNAH OF HIS RIGHTS UNDER THE WORKERS COMPENSATION ACT.

Appellants ask this Court to rehear their appeal and award them a credit for what they claim to be an overpayment of TTD benefits or, alternatively, they ask this Court to "remand to the Commission for proper findings of fact on this issue." (Petition p. 12) Deferring for the moment, the request for credit for TTD payments, remand would serve the antithesis of the purpose of the Workers Compensation Act. Mr. Hannah's claims have been pending before the Commission and now this Court since shortly after his work injuries on July 14, 2009. That is a period of *ten years*. The uncertainty and strife of litigation adds insult to his work injury.

Our Supreme Court recently explained why remands in such cases should be avoided:

One primary goal of the Workers' Compensation Act is to provide quick and efficient resolution of work-related injury claims so neither employers nor employees become bogged down in complicated and protracted litigation. *See Peay v. U.S. Silica Co.*, 313 S.C. 91, 94, 437 S.E.2d 64, 65 (1993) (recognizing "Workers' compensation laws were intended by the Legislature to ... provide sure, swift recovery for workplace injuries regardless of fault"). This Court recently emphasized the goal, stating, "The Workers' Compensation Act was designed to supplant tort law by providing a no-fault system focusing on quick recovery, relatively ascertainable awards, and limited litigation." *Nicholson v. S.C. Dep't of Soc. Servs.*, 411 S.C. 381, 389, 769 S.E.2d 1, 5 (2015) (citing *Wigfall v. Tideland Utils., Inc.*, 354 S.C. 100, 115, 580 S.E.2d 100, 107 (2003)).

Russell v. Wal-Mart Stores, Inc., 426 S.C. 281, 285–86, 826 S.E.2d 863 (2019) (brackets omitted).

Any argument that remand would effectuate "quick and efficient resolution" of Mr. Hannah's injury claims would defy credulity. The Commission, on remand, is just as likely as not

to make its own remand, directing a Single Commissioner to make fact findings as to the denial of TTD credit. This decision would, most likely then be appealed by the Appellants who have denied Mr. Hannah's injury claims through appeal to this Court, twice already. How many more years must Mr. Hannah wait?

In *Russell*, the Court held that "the commission's unnecessary delays and repeated remands over the almost eight years since Russell filed her change of condition claim frustrated the goals of the Workers' Compensation Act." *Id.*, at 288, 826 S.E.2d 863. It explained for a second time that "the possibility of repeated unexplained 'do overs' before a final decision of the Commission" could work a denial of the claimant's rights under the Act. *Id.*, at 287, 826 S.E.2d 863 (citation omitted).

Remand to the Commission would likely continue the "perpetual cycle of orders and appeals such that [Mr. Hannah] will be deprived of an adequate remedy." *Id.*, at 285, 826 S.E.2d 863 (citation omitted) (internal quotation marks omitted).

For these reasons, this Court should not remand this matter to the Commission. As shown below, the Court also should not rehear this case.

II. APPELLANTS' *RES JUDICATA* DEFENSE DOES NOT MERIT REHEARING.

Appellants contend that the Court overlooked "factual and legal points" as to *res judicata*. (Petition p. 2) For *six years* Appellants argued that *res judicata* applies to the present claim for change of condition of cervical spine injuries because prior litigation rejecting lumbar spine injuries bars the new claim. (R. pp. 167; 227) (Appellants' Brief pp. 3-4; 9-12) On review of this C-spine claim, the *Commission* determined that defenses of *res judicata*, collateral estoppel and laches "do not apply because the subject matter is not the same as in the prior litigation which was adjudicated based upon the lumbar spine not the cervical spine ... the Claimant was not negligent

and unreasonable in his explanation or the length of time under the circumstances of his claim ... [and] there is no finding of material prejudice as required by the Doctrine of Laches." (R. p. 10)

On appeal, this Court found that the "Commission did not err in finding the doctrine of *res judicata* did not bar Claimant's claim for permanent disability benefits *because the subject matter* of Claimant's claim, *a change in his condition* arising after the prior litigation, *had not been litigated before.*" *Hannah v. MJV, Inc./Butler Trucking*, No. 2016-001643, 2019 WL 2451077, at *1 (S.C. Ct. App. June 12, 2019) (unpublished disposition) (citations omitted) (emphasis added). The Court aptly noted that "a final judgment or award is not *res judicata* of issues neither asserted nor required to be asserted 'or which could not properly be asserted.'" *Id.* (citation omitted) (emphasis original). And Appellants did not claim that Mr. Hannah's C-spine claim *could have* been asserted during the pendency of the prior litigation/appeal. Thus, the Commission's and this Court's disposal of the *res judicata* defense was appropriate.

A. APPELLANTS WAIVED THEIR ARGUMENT UNDER S.C. CODE § 42-17-90(A) BY FAILING TO RAISE IT TO THE COMMISSION AND ON APPEAL.

Now, for the first time, Appellants assert that *res judicata* applies because S.C. Code § 42-17-90(A) provides that the Commission's review of claims for change in circumstance "must not be made after twelve months from the date of the last payment of compensation" and they assert that Mr. Hannah missed this deadline. (Petition p 2) Nowhere does their appeal to this Court raise this statutory defense. In fact, Appellants' only mention of § 42-17-90(A) is a passing note that Mr. Hannah relied on it in his January 8, 2013 Amended Form 50 (claiming changed circumstances on the admitted cervical spine injury). (Appellants' Brief, p. 3) (See also, Mr. Hannah's Amended Form 50) (R. pp. 159-66)

Nor did Appellants raise it to the Commission in their December 30, 2013 Form 58 seeking

credit for overpayment; September 15, 2014 Form 58 seeking credit for overpayment; nor their February 23, 2016 Motion for Reconsideration by the Commission) (R. pp. 169-70; 174-77; 349)

Appellants, thus, waived their new § 42-17-90(A) defense by failing to raise it to the Commission and on appeal. The Court "can consider only matters that were before the Commission and as to which error has been specifically assigned." *Wall v. C. Y. Thomason Co.*, 232 S.C. 153, 156, 101 S.E.2d 286, 288 (1957).

"It is axiomatic that an issue cannot be raised for the first time on rehearing." *McClurg v. Deaton*, 395 S.C. 85, 87, 716 S.E.2d 887, 888 (2011). *See also, State v. Sweat*, 386 S.C. 339, 350, 688 S.E.2d 569, 575 (2010) (finding arguments "were not properly preserved for this Court's review" because "the Appendix reveals that neither the trial court nor the appellate courts ruled on these issues.") (citing *Pye v. Estate of Fox*, 369 S.C. 555, 564, 633 S.E.2d 505, 510 (2006) ("It is well settled that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial court to be preserved."); and, citing *Kiawah Prop. Owners Group v. Pub. Serv. Comm'n of South Carolina*, 359 S.C. 105, 113, 597 S.E.2d 145, 149 (2004) (finding an issue raised for the first time in a petition for rehearing was not preserved).

Thus, S.C. Code § 42-17-90(A) provides no basis for rehearing.

B. APPELLANTS' CHALLENGE TO THE SUFFICIENCY OF MR. HANNAH'S EVIDENCE IS CONCLUSORY AND PROVIDES NO BASIS FOR REHEARING ON *RES JUDICATA* AND THE RELATED DEFENSE OF LACHES.

As part of their *res judicata* argument, Appellants contend that Mr. Hannah "did not prove by a preponderance of the evidence that his condition had worsened." (Petition p. 2) On appeal and to the Commission they argued that Mr. Hannah's change of condition claim fails because it contained no medical opinion. (Appellants' Brief, p. 3; Reply Brief, p. 9) (R. p. 167) But the facts are well developed on appeal, showing that the claim was filed as soon as Mr. Hannah's counsel

was made of aware of it and Appellants were provided, and acknowledged their intent to use, Mr. Hannah's early treatment records as well as the surgeon, Dr. Brennan's, ample medical opinions by way of Dr. Brennan's surgical treatment records and two depositions. (See, January 15, 2014 Form 51 noting that Appellants would offer same; September 15, 2014 Form 58 noting same) (R. pp. 169; 349) (And, see, Mr. Hannah's January 8, 2013 "Notice of Submission of Medical Records as Direct Evidence") (R. pp. 178-79)

Worsening of Mr. Hannah's condition was also proved through his own testimony, including his March 30, 2010 deposition (for comparison); his January 7, 2013 affidavit (submitted with the change of condition claim); and his live testimony both before and after his condition worsened. (R. pp. 159-66; 196-209; 234-279; 301-05) Such testimony is properly considered in workers compensation matters determining a claimant's impairment. *See, e.g., Burnette v. City of Greenville*, 401 S.C. 417, 425, 737 S.E.2d 200, 204 (Ct. App. 2012) (allowing claimant's testimony as to when her pain worsened). "[D]etermination of an injured employee's impairment rating is more art than science, involving the consideration of evidence the Commission may gather from the injured employee, medical and vocational experts, and lay witnesses." *Id.*, at 429, 737 S.E.2d at 206-07.

Moreover, Appellants' argument as to the merits of the change in circumstances claim was conclusory. It was never supported by legal authority and argument showing how Mr. Hannah's medical and lay evidence were inadequate to prove his claim. (See, Appellants' Brief, p. 3; Reply Brief, p. 9) (And see R. pp. 169) Errors asserted on appeal, but unsupported by cogent argument and pertinent legal authority are deemed by appellate courts to be abandoned. *See, e.g., Savannah Bank, N.A. v. Stalliard*, 400 S.C. 246, 252, 734 S.E.2d 161, 164 (2012). In light of the fact that the "Commission is the ultimate finder of fact", *Long v. Atl. Homes*, 311 S.C. 237, 242, 428 S.E.2d

711, 714, (1993), Appellants have offered no support for rehearing of the Commission's factual findings and evaluation of the merits of Mr. Hannah's evidence of changed condition.

C. THE COMMISSION PROPERLY REJECTED APPELLANTS' LACHES DEFENSE.

Appellants' *res judicata* argument further contends that the Court's decision contains an internal inconsistency as to laches: "[I]f, as this Court concluded with respect to laches, the treatment Claimant received was the treatment recommended by the original authorized treating physician, then his condition did not worsen but, instead, he was receiving the same treatment Dr. Triana recommended originally"; "there is a contradiction in this Court's finding that Claimant established a change of condition for the worse and its conclusion that Appellants were not prejudiced by the fact Claimant sought surgery on his own because it was the same surgery Dr. Triana mentioned." (Appellants' Brief, p. 2)

However, it is the *Commission*, not the Court, which made these findings, initially and again on reconsideration:

The evidence is uncontroverted that the treatment rendered by Dr. Brennan is the treatment which is being recommended by Dr. Triana when he was the authorized treating physician. Brennan found a 28% impairment to the cervical spine which according to his opinion, to a reasonable degree of medical certainty is a result of the injury sustained, by the Claimant in the accident of July 14, 2009.

(Commission orders of February 23, 2016 and July 6, 2016) (R. pp. 14; 23)

The Full Commission is the ultimate finder of fact. *Long v. Atl. Homes*, 311 S.C. 237, 242, 428 S.E.2d 711, 714, (1993). (Citations omitted). "[Appellants'] arguments were presented to the Full Commission and rejected." *Id.* "The final determination of witness credibility and the weight to be accorded evidence is left to the Full Commission." *McGuffin v. Schlumberger-Sangamo*, 307 S.C. 184, 186, 414 S.E.2d 162, 163 (1992) (citation omitted). "A reviewing court may not substitute its judgment for that of the Commission as to the weight of the evidence on questions of

fact." *Id.* (Citations omitted) "The findings of the Commission will be set aside only if unsupported by substantial evidence." *Id.* (Citations omitted) The Court views the evidence in the light most favorable to the claimant. See, e.g., *Muir v. C.R. Bard, Inc.*, 336 S.C. 266, 285, 519 S.E.2d 583, 593 (Ct. App. 1999).

The following substantial evidence supports the Commission's finding that Dr. Brennan's surgery in 2012 was the same treatment recommended by Dr. Triana in 2010¹:

April 28, 2010 medical note of Dr. Triana:

I would recommend considering a decompression and of the C5-6 disc as a first approach to relieving his pain. He had epidurals which helped for short periods of time but are not helping long term. I don't think it is necessary to consider any more epidurals.

(R. p. 189)

May 9, 2013 opinion letter of Dr. Triana:

After reviewing the MRI report, and the actual MRI scan I believe Dr. Triana was mistaken in his dictation. The report and the actual scans clearly show disk problems at C6-7, with lesser changes at C5-6. With that in mind I do believe to a reasonable degree of medical certainty that the patient's injury did arise from the motor vehicle accident of July 14, 2009.

June 26, 2013 deposition of Dr. Brennan:

Basically, that confirmed to me that the area where I did the surgery, which was C6-7, had been previously injured – or was consistent with being previously injured by those MRI findings. There was some confusion because I stated Dr. Triana's notes said C5-6. I'm not sure if that is a typo or just a misstatement on his part, but by my review [of the 2009 MRI], C6-7 was the injured level, by that MRI scan, and probably what Dr. Triana was looking at in his note.

(R. pp. 337-38)

And like I said, I - I don't want to assume to question him, but I - I think it - you know, from looking at the actual film, CG-7 was the level and - the radiologist reported that it was C6-7.

¹ It is also well developed on appeal that Dr. Triana's recommendation was circumvented by the Carrier's transfer of Mr. Hannah's care to Dr. Bethea, who was only authorized to treat the elbow. (Respondent's Brief pp 1-2) (R. pp. 181-84; 187-89; 199; 201; 203-06; 308; 319-21; 323-24; 359)

... I'm pretty firmly convinced that it's C6 7 and I think that might have just been a carryover of a dicta - you know, a lot of times - dictation, say, oh, yeah, he had a disc at C5-6 and you're - you know, it's ... you sort of continue the error.

... but I'm - thoroughly know that it's C6-7 was the level on the MRI from reviewing the film and the reading the report.

Id. (R. p. 341)

This Court may not overturn the Commission's findings, based on this substantial medical and lay evidence, even if it were to disagree with the Commission's interpretation of that evidence.

Indeed, Appellants themselves argued, correctly, in this appeal:

Judicial review of a Commission decision is directed by the substantial evidence rule of the Administrative Procedures Act, S.C. Code Ann. § 1-23-380(5) (Supp. 2016). *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 276 S.E.2d 304 (1981). A reviewing court should affirm the decision of the Full Commission unless it is clearly erroneous in view of the substantial evidence of the whole record. *Lark*, 276 S.C. at 136, 276 S.E.2d at 307. The reviewing court may not substitute its own judgment for that of the Full Commission as to the weight of the evidence on a question of fact, but may reverse if the decision is affected by an error of law. S.C. Code Ann. § 1-23-380(5).

(Appellants' Final Brief, p. 8) (underscore added)

Appellants' Petition fails to show that the Commission's fact findings are unsupported by substantial evidence or that its legal conclusions are clearly erroneous and, thus, rehearing should be denied.

In a separate argument addressing laches, Appellants' mince words, contending that they "did not refuse any *requested* medical treatment for Claimant's *compensable* injury" and, therefore, that Mr. Hannah had no right to seek medical care without first asking them for it. (Petition, pp. 3; 7-8) (emphasis added) It is correct that Appellants did not refuse care for Mr. Hannah's worsened neck pain and that he did not request it. But Appellants did end and refuse care for his *lumbar* spine injury, early in his treatment, and this was an *arbitrary, unexplained reversal* of their original *approval* of Dr. Triana's treatment of the lumbar and C-spine areas. Dr. Triana testified to having

treated the low back and neck in deposition, excerpted verbatim in Mr. Hannah's brief to this Court in the prior appeal. (R. pp. 111-114)

Two Single Commissioner Orders found that Dr. Triana treated the low back and neck soon after the accident: "Dr. Triana found that Claimant could not go back to work because of his injuries to his low back and cervical spine"²; and, "Claimant was followed by Dr. Mark. E. Triana of Carolina Orthopaedic Specialist from September 20, 2009 through February 25, 2010. Dr. Triana treated the Claimant for neck and back pain, including. lower back pain".³

Appellants *continued* to deny care for Mr. Hannah's low back injury *for years*, throughout the first appeal.⁴ Instead, they transferred his care to Dr. Bethea and only authorized him to treat the infection in the elbow wound.⁵

How *should* the ordinarily reasonable claimant understand the carrier's continued refusal of care for low back injuries that he believes were sustained in the same work accident in which he injured his cervical spine, which the new doctor did not treat? The law does not oblige Mr. Hannah to have acted *perfectly*, only reasonably. The Commission, being the ultimate fact finder and weigher of credibility, under *Long v. Atl. Homes, supra*, found that Mr. Hannah "was not negligent and unreasonable" under the circumstances. (R. p. 22) This Court correctly affirmed that decision. *Hannah v. MJV, Inc./Butler Trucking*, at *1 (citation omitted).

On appeal, Appellants did not carry their burden to refute Mr. Hannah's right to seek a

² (July 2, 2015 Single Com. order) (R. p. 30) (Reversed in part on other grounds by the Full Commission on February 23, 2016) (R. p. 15).

³ (January 13, 2011 Single Com. Order) (R. p. 56) (Reversed as to compensability of low back injury by the Full Commission on July 25, 2011) (R. p. 64) (The Full Commission decision of July 25, 2011 was affirmed by this Court on September 26, 2012) (R. p. 49)

⁴ (R. pp 49; 64)

⁵ (Respondent's Brief pp 1-2) (And, see R. pp. 5; 181-4; 187-9; 199; 201; 203-6; 308; 319-21; 323-4; 359)

permanency rating under these circumstances, where "(1) Claimant did not act negligently or unreasonably in seeking medical treatment and filing his claim when he did, and (2) Appellants were not materially prejudiced by Claimant's failure to notify them he was seeking treatment, given that the treatment he received was the treatment recommended by the original authorized treating physician." *Id.*

Appellants seem to have been confused about their burden of proof of laches. They argue "the fact that Claimant misunderstood whether he could seek additional medical treatment for his neck because he had lost the claim regarding his lower back ... does not preclude laches." (Petition, p. 5) The equitable principle of laches is discretionary, not mandatory. See, e.g., *Eldridge v. Eldridge*, 398 S.C. 113, 119, 728 S.E.2d 24, 27 (2012). Thus, there is no *entitlement* to laches. That it isn't ruled out entirely does not mean the Commission abused its discretion by refusing to apply it.

The petition fails to show that Appellants carried their burden as "the party asserting laches" to show "negligence, the opportunity to have acted sooner, and material prejudice[.]" *Hannah v. MJV, Inc./Butler Trucking*, at *1. (Citation omitted). They fail to show material prejudice by Mr. Hannah's actions. (Petition pp. 5-6) Appellants knew of the C-spine injury because Dr. Triana treated it, with their blessing, in 2009. Had Mr. Hannah sought and received care through Appellants when it worsened, they would still have had to pay for the permanent impairment affirmed in this appeal. But they would also have had to pay for associated surgery and other care and TTD benefits. And, based on their past performance, Appellants would likely have denied the claim and refused the care and we would all likely be in the same procedural position we are in now. Thus, rehearing should be denied as to the laches defense.

III. THE COURT CORRECTLY AFFIRMED THE COMMISSION'S DISCRETIONARY DECISION NOT TO CREDIT APPELLANTS FOR TTD BENEFITS.

Appellants seek rehearing on their claim for TTD credits under S.C. Code § 42-9-210, which allows, but does not mandate, credit for benefits "which by the terms of this Title were not due and payable when made." *Id.* Appellants continue to contend that they are entitled to credit for payments after the date of MMI affirmed by this Court in the prior appeal. (Petition, pp. 9-11) They contend that Mr. Hannah reached MMI for all purposes on February 2, 2010, because, one and one-half years later, in August 2011, when he learned that his award for benefits for his lower back injury was overturned by this Court, Mr. Hannah signed Form 17's to stop TTD checks from coming to him. And those Form 17's include the typewritten date of February 2, 2010 as the date on which he was able to return to work (R. pp. 99-100)

Appellants' argument holds no water. Mr. Hannah didn't choose that date; Appellants took it from Dr. Bethea's Form 14B⁶. Mr. Hannah simply wanted to stop the checks.

The prior appeal did not hold that Mr. Hannah reached MMI as to his worsened C-spine condition which did not yet exist. On this issue, this Court noted that "a final judgment or award is not *res judicata* of issues neither asserted nor required to be asserted 'or which could not properly be asserted.'" *Hannah v. MJV, Inc./Butler Trucking*, at *1 (citations omitted). Thus, the prior appeal's references to MMI are not the law of the case as to Mr. Hannah's worsened condition, which did not exist and could not have been litigated as part of that prior claim/appeal. Neither the Commission nor the Court *could have* made findings as to the worsened condition which did not then exist, even though the underlying original *undisputed* C-spine injury did exist.

Despite Appellants contention that the Commission did not make findings supporting their

⁶ "Defendants contend the Claimant reached maximum medical improvement on February 10, 2010, per the opinion of Dr. James Bethea." (R. p. 155) And see Dr. Bethea's Form 14B. (R. p. 76)

credit denial, the Commission's order on reconsideration spends more than two full pages explaining its analysis, thereby providing the basis for its findings and conclusions. (R. pp. 9-11)

None of Appellants' authorities *reverse* the Commission's discretionary decision to *deny* credit for TTD payments - let alone to deny credit when claimant himself stopped the payments before an admitted injury worsened. Undersigned found none *requiring* the Commission to award a credit under S.C. Code § 42-9-210 under any circumstances. Appellants insist this Court should reverse the Commission's discretionary decision under this section, on the strength of three decisions, *Hendricks*, *Curiel* and *Watson*, that affirmed the Commission's discretionary decisions. (Petition, p. 11)

Appellants offer *Hendricks v. Pickens Cty.*, 335 S.C. 405, 416, 517 S.E.2d 698, 704 (Ct. App. 1999). It affirmed the Commission's credit decision as of the date of MMI, as opposed to the later date of the order, noting the "duty to determine facts is placed solely on the commission" and that the "court reviewing the commission's decision has no authority to determine factual issues[.]" *Id.* at 410, 517 S.E.2d at 701 (citations omitted).

Appellants offer *Curiel v. Envtl. Mgmt. Servs. (MS)*, 376 S.C. 23, 29, 655 S.E.2d 482, 485 (2007). It affirmed the Commission's credit decision, and reversed the circuit court's appellate decision noting "[f]actual determinations by the Commission must be upheld on review unless unsupported by substantial evidence." *Id.*

They offer *Watson v. Xtra Mile Driver Training, Inc.*, 399 S.C. 455, 465, 732 S.E.2d 190, 195 (Ct. App. 2012). It affirmed the Commission's credit decision, noting "the appellate panel is specifically reserved the task of assessing the credibility of the witnesses and the weight to be accorded evidence." Thus, their authorities are inapposite.

Curiously, Appellants also offer *Smith v. S.C. Dep't of Mental Health*, 329 S.C. 485, 494

S.E.2d 630, (Ct. App. 1997), *aff'd sub nom. Smith v. SC Dep't of Mental Health*, 335 S.C. 396, 517 S.E.2d 694 (1999). This decision is most unhelpful to them. It held that "if the employer can establish ... that the employee has reached maximum medical improvement, it may terminate the employee's benefits [involuntarily] without regard to whether the employee can return to work[.]" *Id.* This decision, quoted by this Court in this appeal⁷, shows that Appellants *could have* terminated the TTD benefits themselves on February 2, 2010. But they failed to do so, and any 'prejudice' resulting from TTD overpayment is their own doing.

Appellants did nothing about TTD benefits until they sought credit for overpayment on November 7, 2012, more than a year after Mr. Hannah signed those Form 17's voluntarily stopping the TTD checks. (R. pp. 155; 200; 258-60) Mr. Hannah noted this fact in the current appeal. (Respondent's Brief p. 5) Appellants pointed the finger of laches at Mr. Hannah, but what of their own delay? Their November 7, 2012 filing for credit came more than two years after Dr. Bethea signed the Form 14B opining that Mr. Hannah had reached MMI. (R. pp. 76; 155) Appellants' unreasonable delay should not be rewarded with yet more appellate hearings, remands or other mechanisms for generating yet more attorneys' fees and costs in this case. Likewise, Mr. Hannah should not be penalized with more years of litigation strife as a result of Appellants' delays.

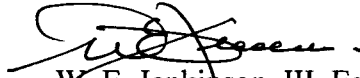
CONCLUSION

On the basis of the above and foregoing, and on the briefs of the parties and the record on appeal, it is respectfully requested that this Court deny Appellants' Petition for Rehearing. In the event that Rehearing is granted, it is respectfully requested that this Court decide the matter with finality and that it not remand the case to the Commission.

⁷ *Hannah v. MJV, Inc./Butler Trucking*, at *2.

Respectfully submitted,

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Attorneys for Respondent

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Commissioners Melody L. James, T. Scott Beck, and Aisha Taylor

W.C.C. File No. 0908371

Timothy Hannah, Employee, Claimant Respondent,

v.

MJV, Inc./Butler Trucking, Employer, and
Palmetto Timber S.I. Fund c/o
Walker, Hunter & Associates, Inc., Carrier Appellants.

PROOF OF SERVICE

I certify that I have served a copy of the *Respondent's Return to Petition for Rehearing* on Appellant, MJV, Inc./Butler Trucking and Palmetto Timber S.I. Fund c/o Walker, Hunter & Associates, Inc., by depositing a copy of it in the United States Mail, postage prepaid, on July 15, 2019, addressed as follows:

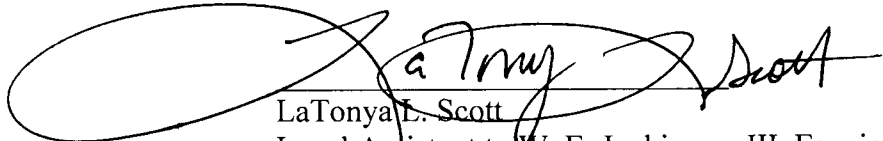
Attorney of record:
R. Mark Davis, Esquire
Helen F. Hiser, Esquire
McAngus Goudelock & Courie, LLC
PO Box 650007
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Attorney for Appellants

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July 15, 2019



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J. Thomas Thompson
William Evan Reynolds

*Certified Family Court Mediator
**Certified Circuit Court Mediator

July 15, 2019

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: Timothy Hannah v. MJV, Inc./Butler Trucking
WCC File No.: 0908371
Appellate Case No.: 2016-001643

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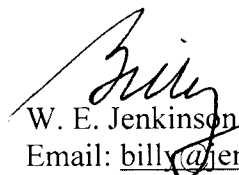
Dear Ms. Kitchings:

Please find enclosed the original and seven (7) copies of Respondent's Return to Petition for Rehearing and the original and one copy of the Proof of Service on opposing counsel. Please file the originals and return a clocked copy to me in the enclosed self-addressed stamped envelope.

Thanking you and with kind regards, I am

Very truly yours,

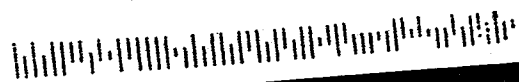
JENKINSON, JARRETT & KELLAHAN, PA


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WEJ/lls

Enclosure(s): as stated

Cc: R. Mark Davis, Esquire
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