

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM SC WORKERS COMPENSATION FULL COMMISSION
JUDICIAL CONFERENCE

Full Commission Judicial Conference

SCWCC: 1320773

Tammy Jordan,

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AUG 13 2019

SC Court of Appeals

Respondent,

The Hartford Financial
Group, Inc,

Appellant.

Resurgent Capital Services

Employer

Interstate Contact Cleaning
Services, Inc.

Third Party Tortfeasor

INITIAL BRIEF OF APPELLANT

Stephen Anderson (SC Bar #101085)
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Greenville, SC 29606
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Attorney for Appellants

Greenville, SC
August 8, 2019

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I. STATEMENT OF THE ISSUES ON APPEAL

1. Whether the South Carolina Workers' Compensation Commission erred in finding Appellant did not meet the standard of "good cause" to reinstate Appellant's appeal to the full commission.

II. STATEMENT OF THE CASE

This matter arises out of Appellant The Hartford Financial Group, Inc., (“Hartford”), Motion to Enforce Lien against Responded Tammy Jordan’s (“Jordan”), Settlement with the Third Party Tortfeasor, Interstate Contact Cleaning Services, Inc., (“Interstate”). Jordan initially filed a lawsuit against Interstate for injuries she alleged to have sustained in work-related accident that occurred on November 14, 2013. Jordan filed her lawsuit on November 10, 2016. Jordan settled her lawsuit with Interstate and subsequently executed a “General Release” on March 7, 2018. Jordan contended that the settlement was for “only future pain and suffering” despite the clear language of the executed release, and was therefore not required to comply with SC Code § 42-1-560 (2013).

Hartford’s Motion to Enforce the Carrier’s Lien was heard by a single commissioner on November 14, 2018, and denied on January 22, 2019. Hartford then timely filed an appeal to the full commission. A Form 31 was set to the Hartford’s attorney on April 12, 2019, that indicated that an appellant brief was due on May 12, 2019, and that a full commission hearing would be held on June 17, 2019. For reasons set forth below, Hartford’s brief was filed after May 12. As such, the Hartford’s appeal was administratively dismissed on May 23, 2019. Hartford then filed a Motion to Reinstate for Good Cause on May 24, 2019. Hartford’s Motion to Reinstate was denied in a Judicial Conference on June 17, 2019, without a hearing. A copy of the Judicial Conference Decision and Order was emailed to the Hartford’s attorney on the same. Hartford filed a Notice of Appeal to this Court on July 10, 2019.

III. STANDARD OF REVIEW

The South Carolina Administrative Procedures Act (“APA”) establishes the standard for judicial review of decisions of the Workers' Compensation Commission. *See Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 276 S.E.2d 304 (S.C.1981); *Gibson v. Spartanburg Sch. Dist. No. 3*, 338 S.C. 510, 526 S.E.2d 725 (Ct.App.2000). Under the scope of review established in the APA, this court may not substitute its judgment for that of the Appellate Panel as to the weight of the evidence on questions of fact, but may reverse or modify the Appellate Panel's decision if the appellant's substantial rights have been prejudiced because the decision is affected by an error of law or is “clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record.” *See* S.C.Code Ann. § 1-23-380(5)(e) (Supp.2012). The South Carolina Supreme Court has defined substantial evidence as evidence that, in viewing the record as a whole, would allow reasonable minds to reach the same conclusion the Appellate Panel reached. *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 135, 276 S.E.2d 304, 306 (S.C. 1981).

IV. ARGUMENT

The Appeal should be granted because Appellant demonstrated good cause as to why the Motion to Reinstate should have been granted pursuant to S.C. Code of Regulations R. 67-705(H)(4).

The Appellant’s attorney (“attorney”) was served with the Form 31 Briefing Schedule and Notice of Appellate Hearing on April 12, 2019. The attorney’s paralegal inadvertently placed the wrong date of May 27, 2019, (this is the date that the Respondent’s brief would have been due), on the undersigned’s calendar regarding the filing deadline for the Appellant’s brief. (*See Affidavit of Jill Lawrence attached to Appellant’s Motion to*

Reinstate). The Appellant's brief was due by May 12, 2019, per the Form 31. The attorney learned that this matter had been administratively dismissed via email on May 23, 2019. The attorney filed an appellant brief on May 24, 2019, 24 days prior to the date of the full commission hearing.

S.C. Code of Regulations R. 67-705(H)(4) states that an "appeal administratively dismissed by the Judicial Department may be reinstated for a good cause upon motion to the Commission." The above cited regulation does not provide a definition of "good cause". The good cause standard for granting relief from an entry of default requires a party seeking relief to provide an explanation for the default and give reasons why vacating the default entry would serve the interests of justice. *White Oak Manor, Inc. v. Lexington Ins. Co.*, 407 S.C. 1, 753 S.E.2d 537(S.C. 2014). This Court affirmed a finding of the full commission that "good cause"¹ existed on an occasion when an appellant claimed that they never received an order from a single commission hearing, and thus failed to timely file a Form 30 to the full commission. *Matute v. Palmetto Health Baptist*, 391 S.C. 291, 705 S.E.2d 472 (Ct. App. 2011)². The appellant in *Matute* alleged that the order was never served despite the respondent's certificate of service indicating that the order was sent via first class mail. *Id* at 295. Also in *Matute*, the Court noted that the appellant filed a Form 30 four days after it learned from the commission that the order had been executed.

In this matter, the full commission left Appellant guessing as to why or how Appellant failed to demonstrate good cause. The order provided simply has 1 box

¹ This Court also did not define good cause.

² This case appears to be only case this Court has ever issued a published decision concerning S.C. Code of Regulations R. 67-705(H)(4).

checked indicating the Motion to Reinstate was denied. This matter should be remanded back to the full commission as good cause was shown by the Appellant. The Appellant demonstrated good cause via the Affidavit of Jill Lawrence that indicated that a simple calendaring error by the Appellant's attorney's paralegal is the sole cause of Appellant's failure to timely file a brief. A reasonable mind would have to conclude that the interests of justice are not being served by dismissing this matter in a closed hearing due to a harmless error that resulted in no prejudice to either party. Furthermore, the error in this instance is less egregious and far more transparent than the explanation that was found to demonstrate good cause by the full commission in the *Matute* case.

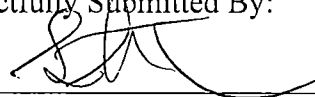
Appellant contends that if this Court should find good cause existed, the matter should be remanded back to the full commission with no further discussion. However, should this Court use the standard for determining good cause is identical to the standard used when determining whether an entry of default has been entered, Appellant contends that once a party has put forth a satisfactory explanation for the default, the trial court must also consider: 1. the timing of the motion for relief; 2. whether the defendant has a meritorious defense; and 3. the degree of prejudice to the plaintiff if relief is granted. *Sundown Operating Co. v. Intedge Indus., Inc.*, 383 S.C. 601, 607-608, 681 S.E.2d at 888. (S.C. 2009). In this matter, Appellant filed a motion for relief the day after it learned of the administrative dismissal, Appellant presented numerous meritorious defenses rooted in SC Code § 42-1-560 (2013), and there was no prejudice done to the Respondent as S.C. Code of Regulations R. 67-705(C) states that "The respondent *may* file a brief and proof of service on the opposing party with the Judicial Department within fifteen days of service of the appellant's brief". (*emphasis added*). The plain language of S.C. Code of

Regulations R. 67-705 clearly states that the respondent was not even required to file a brief. Even if Respondent wished to file a brief in response to Appellant's May 24 dated brief, Respondent still could have done so within 15 days after service of the Appellant's brief, as the full commission hearing was not until June 17.

V. CONCLUSION

Appellant has demonstrated good cause as to why this matter should be remanded to the full commission for hearing on its merits. This Court should remand this issue back to the full commission for a hearing on its merits.

Respectfully Submitted By:



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On this ___ day of August, 2019
Greenville, South Carolina

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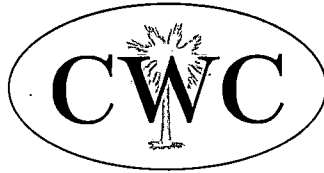
PROOF OF SERVICE

I certify that I have served the Initial Brief of Appellant and Appellant Designation of Matter on Appeal on Respondent by depositing a copy of it in the United States Mail, postage prepaid, on August 8, 2019, addressed to her attorney of record, Richard Patton, 819 E. North Street, Greenville, SC 29601.



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

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SC Court of Appeals

Re: Tammy Jordan v. Resurgent Capital Services
SCWCC: 1320773

Dear Ms. Kitchings:

Enclosed herewith, please find an original and one (1) copy of the Initial Brief of Appellant, Designation of Matter on Appeal and Affidavit of Service in the above-referenced case. Please file the originals in your office and return the filed copies to me in the self-addressed stamped envelope provided for your convenience.

Should you have any questions or require further information, please do not hesitate to contact me.

Very truly yours,

Clarkson, Walsh & Coulter, P.A.

Stephen T. Anderson

MTC/tdb

Enclosures

cc: Richard Patton, Esq. (w/enclosures)

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