

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

W.C.C. File No.: 1322347

RECEIVED
AUG 26 2019
SC Court of Appeals

Courtney Ray Mitchell, Employee,Appellant,

v:

United Parcel Service, Employer, and
Liberty Mutual, Carrier, Respondents.

**RETURN IN OPPOSITION TO
MOTION FOR LEAVE TO FILE AMENDED NOTICE OF APPEAL
AND AMENDED NOTICE OF APPEAL**

Pursuant to Rules 201 and 240(e), SCACR, Respondents United Parcel Service and Liberty Mutual hereby oppose Appellant Courtney Ray Mitchell's Motion for Leave to File Amended Notice of Appeal and his Amended Notice of Appeal ("Motion and Amended Notice of Appeal"). While Respondents would not oppose a mere technical correction in an amended Notice of Appeal, Appellant's proposed amendment goes far beyond an inadvertently omitted order. His Motion and proposed Amended Notice of Appeal are nothing less than an attempt to appeal directly to this Court of a Single Commissioner decision – one that he failed to effectively appeal to the Full Commission.

BACKGROUND

Appellant initiated this claim before the South Carolina Workers' Compensation Commission by filing two Form 50 Requests for Hearing on December 23, 2014 and

April 12, 2017, respectively, alleging he suffered a compensable injury to his psyche/mental health while employed by Respondent UPS on June 21, 2013. Appellant filed an Amended Form 50 on February 2, 2018, again alleging compensable injury to his mental health but also, and for the first time, alleging a compensable aggravation of his lumbar spine and bi-lateral carpal tunnel. (Exh. A). Defendants timely responded to all of these Form 50s denying that Appellant suffered any compensable injuries by accident and raising other defenses.

A hearing was scheduled for October 27, 2017 before Single Commissioner T. Scott Beck to address Appellant's claim. Commissioner Beck issued a Decision and Order on February 14, 2019, denying Appellant's claim on multiple grounds. (Exh. B).

Appellant filed a timely Form 30, Request for Commission Review with the Full Commission, raising 15 separate exceptions. (Exh. C). On April 12, 2019, the Commission issued a Form 31 Briefing Schedule and Notice of Appellate Hearing setting May 12, 2019 as the due date for Appellant's Brief to be filed, and setting a hearing date of June 17, 2019. (Exh. D). However, because Appellant failed to file and serve a brief or request an extension of time in which to do so, his appeal was dismissed by Administrative Order, dated May 23, 2019. (Exh. E).

On June 10, 2019, Appellant filed a Motion to Vacate the Order of Dismissal and to Reinstate the Appeal with the Commission alleging that he had filed his brief "on May 13, 2019, as evidenced by the Certificate of Service and the envelope post marked May 13, 2019." (Exh. F).¹ However, neither the referenced Certificate of Service nor post-

¹ Included with his Motion to Vacate was a Motion for Continuance of the Full Commission Review hearing. (Exh. F). This confirms that Appellant received the Form 31 Briefing Schedule Order.

marked envelope was attached to his Motion to Vacate.² To date Appellant has not produced any evidence that he either filed his Brief with the Commission or served it on Respondents, who have never received a copy of his allegedly-filed Brief.

Consequently, on July 15, 2019, the Commission issued a Judicial Conference Decision and Order, signed by Commissioner Susan S. Barden, denying Appellant's Motion to Vacate. (Exh. H). That is the July 15, 2019 Order that Appellant appealed in his initial Notice of Appeal, dated August 9, 2019, incorrectly referring to the Judicial Conference Decision and Order as a "decision of Honorable T. Scott Beck." Now Appellant has clarified in his Amended Notice of Appeal that he also is attempting to appeal directly to this Court Commissioner Beck's Single Commissioner Decision and Order, filed on May 23, 2019, which has not been reviewed by the Full Commission pursuant to S.C. Code Ann. § 42-17-60.

ARGUMENT

Pursuant to Rule 201, SCACR, appeals may be taken "from any final judgment, appealable order or decision." However, a decision by a single commissioner, which has not been appealed effectively to and determined by the Full Commission is not a final judgment or order subject to direct appeal to this Court. Janhrette v. Union Camp Paper Corp., 293 S.C. 59, 60, 358 S.E.2d 704, 705 (1987). In Janhrette, the Supreme Court affirmed that a single commissioner's decision cannot be appealed directly to the circuit court or, in this case, this Court, without first being reviewed by the full commission. Quoting from Riddle v. Fairforest Finishing Co., 198 S.C. 419, 18 S.E.2d 341 (1942), the

² As was pointed out in their opposition, "[n]either the Certificate of Service nor the envelope were produced as an exhibit to the motion." (Exh. G). None has been produced since.

Supreme Court held that current Sections 42-17-40 to -60 “provide for the disposition of a claim made to the Industrial Commission by the orderly process of a hearing before a single commissioner, or a deputy appointed by the full commission; a review, by the full commission, of the single commissioner’s award; an appeal from an award by the full commission to the” appropriate appellate court. Janhrette, 293 S.C. at 60, 358 S.E.2d at 705. There is no direct appeal from a single commissioner to this Court. As a result, this Court should deny Appellant’s Motion and Amended Notice of Appeal.

The Commission’s regulations, which “have the force of law,” Levi v. Northern Anderson County EMS, 409 S.C. 374, 380, 762 S.E.2d 44, 48 (Ct. App. 2014), govern appeals from a single commissioner to the Full Commission. Pursuant to Reg. 67-704, “[t]he appellant’s brief must be filed with the Commission according to R.67-205 and R.67-705 on or before the date stated on the Form 31.” S.C. Code Reg. § 67-704(A)(2).³ Reg. 67-705, in turn, provides that the “appellant shall” file its brief with the Commission and serve it on other parties, showing proof of service. S.C. Code Reg. § 67-705(A)&(B). Use of the terms “must” and “shall” in a statute or a regulation means the action is mandatory. *E.g.*, Richland County v. South Carolina Dep’t of Rev., 422 S.C. 292, 309, 811 S.E.2d 758, 767 (2018) (under the rules of statutory interpretation, use of the terms “must” and “shall” indicate a mandatory requirement and courts have “no right to impose another meaning”). Therefore, Appellant was required to file his

³ Reg. 67-205 defines filing with the Commission. S.C. Code Reg. § 67-205.

brief pursuant to the Form 31 Briefing Schedule. Despite his protestations otherwise, there is no evidence whatsoever that he did so.⁴

“If the appellant fails to file a brief within ten days of receipt of the Form 31, the Judicial Department may remove the case from the review hearing docket by issuing an administrative order dismissing the appeal.” S.C. Code Reg. § 67-705(H)(3). While the due date for filing a brief may be extended upon consent of the opposing party, evidence of such agreement must be filed with the Commission “on or before the original filing date.” S.C. Code Reg. § 67-705(H). Thus, in order to maintain his appeal before the Full Commission, Appellant either had to file his brief by the deadline set by the Commission in its Form 31 Briefing Schedule, or seek an extension of time in which to do so. He did neither and, as a result, the Full Commission properly dismissed his appeal. That left Commissioner Beck’s May 23, 2019 Decision and Order the unappealed law of this case, not subject to further review. *See Janhrette*, 293 S.C. at 60, 358 S.E.2d at 705.

Both the Commission’s Regulations and this Court’s Rules provide for dismissal of an appeal where an appellant fails to file a brief. *See* Reg. 67-705(H)(3) (if an appellant fails to file a brief as specified on the Form 31, the Commission “may remove the case from the review hearing docket by issuing an administrative order dismissing the appeal”); Rule 208(a)(4), SCACR (“[u]pon the failure of the appellant to file and serve his brief within the time prescribed, the clerk of the appellate court shall sign an order dismissing the appeal, and the appeal shall not be reinstated except as provided by

⁴ Having failed to attach the alleged Certificate of Service or date stamped envelope to the Motion to Vacate filed with the Commission, Appellant cannot present such purported evidence to the Court at this late date.

Rule 260”⁵; *see also* Roberts v. LaConey, 375 S.C. 97, 100, 650 S.E.2d 474 (2007) (dismissing appeal where the appellant failed to file a brief according to the briefing schedule); Wimberly v. Barr, 359 S.C. 414, 416 n.2, 597 S.E.2d 853, 854 n.2 (Ct. App. 2004) (declining to consider an appellant’s issues where he failed to file a final brief); Nationwide Mut. Ins. Co. v. Eagle Window & Door, Inc., 424 S.C. 256, 270, 818 S.E.2d 447, 455 (2018) (declining to consider issues not argued in a brief); *cf.* Turner v. Santee Cement Carriers, Inc., 277 S.C. 91, 96, 282 S.E.2d 858, 860 (1981) (advising that a respondent’s failure to file a brief, “allows this Court to take such action upon the appeal as it deems proper”).

An appeal that has been administratively dismissed pursuant to Reg. 67-705(H)(3) “may be reinstated for a good cause upon motion to the Commission.” S.C. Code Reg. § 67-705(H)(4). Appellant’s Motion to Vacate does not cite Reg. 67-705, or even Reg. 67-209, but Rule 6, SCRPC, regarding the computation of time. More importantly, however, Appellant’s Motion to Vacate did not address the good cause standard set forth in Reg. 67-705(H)(3). He merely asserted that he had filed his Brief in a timely fashion, referencing “the Certificate of Service and the envelope post marked May 13, 2019.” (Exh. F). As noted above, neither the purported Certificate of Service nor a post-marked envelope were attached to the Motion to Vacate or submitted to the Commission. Respondents have never received a Full Commission Brief from Appellant. (Exh. G).

As a result, the Full Commission was justified in dismissing and not reinstating Claimant’s appeal of Commissioner Beck’s May 23, 2019 Decision and Order which, in

⁵ Like Reg. 67-705(H)(4), Rule 260, SCACR, embodies a “good cause” standard.

turn, deprives this Court of appellate jurisdiction. It is axiomatic that the failure to effectively appeal a decision by the single commissioner to the Full Commission makes the single commissioner decision, "right or wrong ... the law of the case." *See, e.g., Reese v. CCI Constr. Co.*, 334 S.C. 600, 604, 514 S.E.2d 144, 145 (Ct. App. 1999). "Issues and arguments are preserved for appellate review only when they are raised to and ruled on by the lower court." *Transp. Ins. Co. v. South Carolina Second Injury Fund*, 389 S.C. 422, 431, 699 S.E.2d 687, 691 (2010).

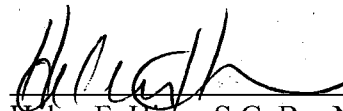
The failure to obtain a Full Commission decision that would be subject to review by this Court lies with Appellant. He failed to file and serve an appellant's brief by the date set by the Commission and failed to seek any extension of time in which to do so. (Exh. D; *see also* Exh. E). He failed to argue that good cause exists, pursuant to Reg. 67-705(H)(3), to excuse his failure to file an appellant brief. (Exh. F). He cannot now bypass the Full Commission review and have this Court, which lacks appellate jurisdiction, *Allison v. W.L. Gore & Assocs.*, 394 S.C. 185, 188, 714 S.E.2d 547, 549 (2011), review the Single Commissioner Decision.

CONCLUSION

For all the reasons set forth herein, this Court should deny Appellant's Motion and Amended Notice of Appeal and dismiss this appeal with prejudice.

August 23, 2019

McANGUS GOUDELOCK & COURIE, LLC



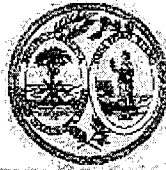
Helen F. Hiser, S.C. Bar No.: 76124

P.O. Box 650007

Mount Pleasant, South Carolina 29465

(843) 576-2900

*Attorneys for Respondents United Parcel Service
and Liberty Mutual*



Claimant's Name: Courtney R. Mitchell SSN: _____ Employer's Name: UNITED PARCEL SERVICE INC
 Address: _____ Address: 204 HALTON RD
 City: _____ State: SC Zip: _____ City: GREENVILLE State: SC Zip: 29607-3576
 Home Phone: () - () Work Phone: () - () Insurance Carrier: Liberty Insurance Corporation
 Preparer's Name: Donald L. Smith Law Firm: Attorney Office of Donald Smith Preparer's Phone #: (864) 642-9284

Complete each information blank. To request a hearing, check Box 13b, indicate the kinds of benefits claimed by checking the box(es) at lines 6, 7, 8, and 9, and file this form in duplicate.

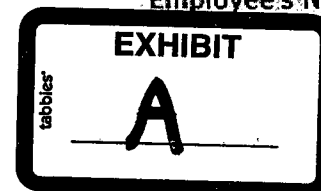
A claim for workers' compensation benefits is made based on the following grounds: _____ Date of Injury or Illness: Spring, 2013

- Injury Illness Repetitive Trauma
- 1a. The claimant sustained an injury to mental health (Part(s) of Body Injured) On Spring, 2013 (Month/Day/Year) in Greenville county, state of South Carolina.
 - 1b. Body part(s) affected are: mental health (PTSD, panic attacks, depression, bipolar disorder).
 Briefly describe how the accident occurred: Accident occurred because the employer refused to take heed that the stress on the claimant was overwhelming.
 2. Both the claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of injury.
 3. The relationship of employer and employee existed at the time of injury.
 4. At the time of the injury the claimant was performing services arising out of and in the course of employment.
 5. Notice of the accidental injury was given to the Employer on Spring, 2013 (Month/Day/Year) in the following manner:
Claimant told Mike Batista and multiple other supervisors that he was under a significant amount of stress due to being unable to handle his responsibilities and asked for a demotion.
 6. Due to injury, the claimant is in need of (check one):
 (a) medical examination and treatment for: bipolar disorder
 (b) additional medical examination and treatment for: bipolar disorder
 7. Due to injury, the claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of: TBD
 8. Due to the injury, the Claimant has permanent disability of the following nature and extent (check one):
 (1) General Disability: Total (2) Specific Disability: Total Partial
 (3) Wage Loss Partial
 9. Due to the injury, the Claimant has a serious bodily disfigurement consisting of:
None.
 - 10a. At the time of the injury, the Claimant was paid weekly wages of \$ _____, and demands accounting of days worked and wages earned as provided by law.
 - 10b. Give names and addresses of all employers for whom the Claimant has worked since the date of the accident:
None.
 - 11a. Further grounds or unusual aspects of claim:
None.
 - 11b. List names and addresses of all physicians or other medical specialists who have seen or treated the Claimant as a result of the accident:
Dr. Manuel Torres (LCSW) 50 Cross Park Ct Greenville, SC 29605. Dr. Ernest Martin (MD) 309 W. Beltline Blvd. Anderson, SC 29621
 - 11c. To the best of your knowledge, did you have any prior permanent disability? No.
 If yes, describe: _____
 12. Appropriate benefits as provided in the Act for the above grounds and other relief as the Workers' Compensation Commission may direct as just and proper.
 - 13a. I am filing a claim. I am not requesting a hearing at this time.
 - 13b. I am requesting a hearing. A \$25 fee is required.
 14. Estimated time needed for hearing: _____

I verify the contents of this form are accurate and true to the best of my knowledge.

Preparer's Signature: [Signature] Attorney: _____ Title: _____ Email: attorneydonaldsmith@gmail.com Date: 8/23/14

Refer to R.67-204 through R.67-210 and R.67-601 through R.67-615. Questions about the use of this form may be directed to the Commission's Claims Department.



STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Courtney Ray Mitchell,
Claimant,

CERTIFICATE OF SERVICE BY MAIL

vs.

W.C.C. File No. PLEASE PROVIDE

United Parcel Service, Inc.,
Employer,

and

Liberty Insurance Corporation,
Carrier,
Defendants.

THE UNDERSIGNED person deposes and says that he served a copy of a Form 50 Request for Hearing for the above-referenced Claimant in this action, by placing a copies thereof in envelopes addressed to the parties at the addresses shown below, which envelopes were sealed and postage thereon fully prepaid, and deposited in the United States Mail at Anderson, South Carolina, and that there is regular communication by the United States Mail between the place of mailing and the places addressed as follows:

Date:

12/23/14



Tyler Smith
Paralegal to Donald L. Smith
ATTORNEY OFFICE OF DONALD SMITH
122 N. Main Street
Anderson SC 29621
Telephone: (864) 642-9284
Facsimile: (864) 642-9285

MAILED TO:

Sonji Spann, Director
South Carolina Workers' Compensation Commission
PO Box 1715
Columbia SC 29202-1715

United Parcel Service, Inc.
55 Glenlake Pkwy NE
Atlanta GA 30328

Liberty Insurance Corporation
P.O. Box 31204
Tampa FL 33631



Claimant's Name: Courtney Ray Mitchell SSN: _____ Employer's Name: United Parcel Service
Address: _____ Address: 204 Halton Road
City: _____ State: SC Zip: _____ City: Greenville State: SC Zip: 29607
Home Phone: _____ Work Phone: _____ Insurance Carrier: Liberty Insurance Corporation
Preparer's Name: Donald L. Smith Law Firm: Attorney Donald Smith Preparer's Phone #: (864) 642-9284

Complete each information blank. To request a hearing, check Box 13b, indicate the kinds of benefits claimed by checking the box(es) at Lines 6, 7, 8, and 9, and file this form in duplicate.

A claim for workers' compensation benefits is made based on the following grounds: Date of Injury or Illness: 06/21/2013
 Injury Illness Repetitive Trauma

- 1a. The claimant sustained an injury to his mental health (Part(s) of Body Injured) on June 21, 2013 (Month/Day/Year) in Greenville county, state of SC.
Body part(s) affected are: mental health
- 1b. Briefly describe how the accident occurred. Claimant's employer refused to take heed that the stress on Claimant was overwhelming.
2. Both the claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of injury.
3. The relationship of employer and employee existed at the time of injury.
4. At the time of the injury the claimant was performing services arising out of and in the course of employment.
5. Notice of the accidental injury was given to the Employer on 06/21/2013 (Month/Day/Year) in the following manner:
Claimant informed numerous higher ups that the responsibilities of the position were getting to be too much and repeatedly asked for a demotion.
6. Due to injury, the claimant is in need of (check one):
 (a) medical examination and treatment for: various mental health issues
 (b) additional medical examination and treatment for: various mental health issues
7. Due to injury, the claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of:
TBD
8. Due to the injury, the Claimant has permanent disability of the following nature and extent (check one):
 (1) General Disability: Total (2) Specific Disability: Total
 (3) Wage Loss Partial Partial
9. Due to the injury, the Claimant has a serious bodily disfigurement consisting of: numerous scars
- 10a. At the time of the injury, the Claimant was paid weekly wages of \$TBD, and demands accounting of days worked and wages earned as provided by law.
- 10b. Give names and addresses of all employers for whom the Claimant has worked since the date of the accident:
Same.
- 11a. Further grounds or unusual aspects of claim:
None.
- 11b. List names and addresses of all physicians or other medical specialists who have seen or treated the Claimant as a result of the accident:
See Addendum.
- 11c. To the best of your knowledge, did you have any prior permanent disability? No.
If yes, describe: _____
12. Appropriate benefits as provided in the Act for the above grounds and other relief as the Workers' Compensation Commission may direct as just and proper.
- 13a. I am filing a claim. I am not requesting a hearing at this time.
- 13b. I am requesting a hearing. A \$25 fee is required.
14. Estimated time needed for hearing: 30 minutes

I verify the contents of this form are accurate and true to the best of my knowledge.

Preparer's Signature: [Signature] Attorney for Claimant: attorneydonaldsmith@gmail.com Title: _____ Email: _____ Date: _____

Refer to R.67-204 through R.67-210 and R.67-601 through R.67-615. Questions about the use of this form may be directed to the Commission's Claims Department.

ADDENDUM

1. Manuel Torres, LCSW
50 Cross Park Ct., Greenville SC 29605
2. Ernest Martin, MD
309 W. Beltine Blvd., Anderson SC 29621
3. Rebecca Norris, MD
2000 East Greenville St., Anderson SC 29621
4. David Price, Ph.D.
304 W. Stone Ave., Greenville SC 29609

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

Courtney Ray Mitchell,)
Claimant,)

vs.)

United Parcel Service,)
Employer,)

and)

Liberty Insurance Corporation,)
Carrier,)

Defendants.)

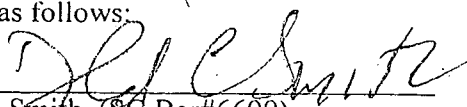
BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

CERTIFICATE OF SERVICE BY MAIL

W.C.C. File No.: 1322347

THE UNDERSIGNED person deposes and says that he served a copy of a Form 50 (Employee Requesting a Hearing) for the above-referenced Claimant in this action, by placing copies thereof in envelopes addressed to the parties at the addresses shown below, which envelopes were sealed and postage thereon fully prepaid, and deposited in the United States Mail at Anderson, South Carolina, and that there is regular communication by the United States Mail between the place of mailing and the places addressed as follows:

Date: 4/12/17


Donald L. Smith, (SC Bar#6699)
Attorney for Claimant
ATTORNEY OFFICE OF DONALD SMITH
122 N. Main Street
Anderson SC 29621
Telephone: (864) 642-9284
Facsimile: (864) 642-9285
attorneydonaldsmith@gmail.com

MAILED TO:

Sonji Spann, Director
South Carolina Workers' Compensation Commission
P.O. Box 1715
Columbia SC 29202-1715

O. Shayne Williams, Esquire
P.O. Box 2980
Greenville SC 29602

South Carolina Workers' Compensation Commission
1612 Marion Street • Post Office Box 1715
Columbia, South Carolina 29202-1715
(803) 737-5723
www.wcc.sc.gov



WCC File #: 1322347
Carrier File #: WC555C6285
Carrier Code #: _____
Employer FEIN #: _____

Claimant's Name: Courtney Ray Mitchell SSN: _____ Employer's Name: United Parcel Service
Address: Gilliam Psychiatric Hospital 4344 Broad River Rd. Address: 204 Halton Road
City: Columbia State: SC Zip: 29210 City: Greenville State: SC Zip: 29607
Home Phone: _____ Work Phone: _____ Insurance Carrier: Liberty Insurance Corporation
Preparer's Name: Donald L. Smith Law Firm: Attorney Donald Smith Preparer's Phone #: (864) 642-9284

Complete each information blank. To request a hearing, check Box 13b, indicate the kinds of benefits claimed by checking the box(es) at Lines 6, 7, 8, and 9, and file this form in duplicate.

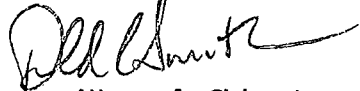
A claim for workers' compensation benefits is made based on the following grounds:

Date of Injury or Illness: 06/21/2013

Injury Illness Repetitive Trauma

- 1a. The claimant sustained an injury to his Exacerbation of lumbar spine issues, bi-lateral carpal tunnel and Mental Health (Part(s) of Body Injured) on June 21, 2013 (Month/Day/Year) in Greenville county, state of SC.
- 1b. Body part(s) affected are: Exacerbation of lumbar spine issues, bi-lateral carpal tunnel and Mental Health
Briefly describe how the accident occurred. Claimant's prolonged sitting at his desk while performing his job exacerbated his lumbar spine issues, coupled with the onset of bilateral carpal tunnel due to his incessant use of the computer, created physical limitations that coupled with the exacerbation of his pre-existing mental issues, caused stress which pushed him "over the edge". Based on the constant degradation by his superiors, and the stress resulting from his recognized inability to do his job, he suffered mental damage for which he has never recovered.
2. Both the claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of injury.
3. The relationship of employer and employee existed at the time of injury.
4. At the time of the injury the claimant was performing services arising out of and in the course of employment.
5. Notice of the accidental injury was given to the Employer on 06/21/2013 (Month/Day/Year) in the following manner:
Claimant informed numerous higher ups that the responsibilities of the position were getting to be too much and repeatedly asked for a demotion.
6. Due to injury, the claimant is in need of (check one):
 (a) medical examination and treatment for: bilateral carpal tunnel symptoms, lumbar radiculopathy and mental health issues
 (b) additional medical examination and treatment for: bilateral carpal tunnel symptoms, lumbar radiculopathy and mental health issues
7. Due to injury, the claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of:
TBD
8. Due to the injury, the Claimant has permanent disability of the following nature and extent (check one):
 (1) General Disability: Total Partial (2) Specific Disability: Total Partial
 (3) Wage Loss
9. Due to the injury, the Claimant has a serious bodily disfigurement consisting of:
 - 10a. At the time of the injury, the Claimant was paid weekly wages of \$TBD, and demands accounting of days worked and wages earned as provided by law.
 - 10b. Give names and addresses of all employers for whom the Claimant has worked since the date of the accident:
None.
 - 11a. Further grounds or unusual aspects of claim:
None.
 - 11b. List names and addresses of all physicians or other medical specialists who have seen or treated the Claimant as a result of the accident:
See Addendum.
 - 11c. To the best of your knowledge, did you have any prior permanent disability? No.
If yes, describe: _____
 12. Appropriate benefits as provided in the Act for the above grounds and other relief as the Workers' Compensation Commission may direct as just and proper.
- 13a. **I am filing a claim. I am not requesting a hearing at this time.**
 13b. **I am requesting a hearing. A \$25 fee is required.**
14. Estimated time needed for hearing: 2 hours

I verify the contents of this form are accurate and true to the best of my knowledge



Attorney for Claimant

attorneydonaldsmith@gmail.com

February 2, 2018

Preparer's Signature

Title

Email

Date

Refer to R.67-204 through R.67-210 and R.67-601 through R.67-615. Questions about the use of this form may be directed to the Commission's Claims Department.

WCC Form # 50

Revised 9/07

**AMENDED
50**

Employee's Notice of Claim and/or Request for Hearing

ADDENDUM

1. Manuel Torres, LCSW
50 Cross Park Ct., Greenville SC 29605
2. Ernest Martin, MD
309 W. Beltine Blvd., Anderson SC 29621
3. Rebecca Norris, MD
2000 East Greenville St., Anderson SC 29621
4. David Price, Ph.D.
304 W. Stone Ave., Greenville SC 29609

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Courtney Ray Mitchell,)
Claimant,)

CERTIFICATE OF SERVICE BY MAIL

vs.)

W.C.C. File No.: 1322347

United Parcel Service,)
Employer,)

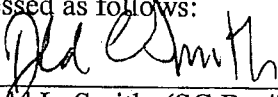
and)

Liberty Insurance Corporation,)
Carrier,)

Defendants.)

THE UNDERSIGNED person deposes and says that he served a copy of an Amended Form 50 (Employee Requesting a Hearing) for the above-referenced Claimant in this action, by placing copies thereof in envelopes addressed to the parties at the addresses shown below, which envelopes were sealed and postage thereon fully prepaid, and deposited in the United States Mail at Anderson, South Carolina, and that there is regular communication by the United States Mail between the place of mailing and the places addressed as follows:

Date: 2/2/2018



Donald L. Smith, (SC Bar#6699)
Attorney for Claimant
ATTORNEY OFFICE OF DONALD SMITH
122 N. Main Street
Anderson SC 29621
Telephone: (864) 642-9284
Facsimile: (864) 642-9285
attorneydonaldsmith@gmail.com

MAILED TO:

Sonji Spann, Director
South Carolina Workers' Compensation Commission
P.O. Box 1715
Columbia SC 29202-1715

O. Shayne Williams, Esquire
McAngus Goudelock & Courie, LLC
PO Box 1349
Myrtle Beach SC 29578

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 1322347

COURTNEY RAY MITCHELL,

Employee,

Claimant,

vs.

UNITED PARCEL SERVICE,

Employer,

AND

LIBERTY MUTUAL,

Carrier,

Defendants.

DECISION AND ORDER

DATE OF HEARING:

Hearing held in Columbia, S.C. on November 2, 2018.

APPEARANCES:

Claimant appeared via videoconference and was represented by Donald L. Smith, Esquire of Anderson, South Carolina.

Defendants represented by O. Shayne Williams, Esquire of McAngus Goudelock & Courie, L.L.C. of Myrtle Beach, South Carolina.

PURPOSE OF THE HEARING:

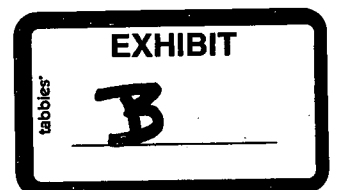
To determine all issues as set forth in Forms 50 and 51 as well as any other issues timely presented before the Commission.

COMMISSIONER:

Commissioner T. Scott Beck

FILED:

February 14, 2019



STIPULATIONS

At the hearing, Counsel for the Claimant and Defendants stipulated the following issues:

1. The purpose of the hearing was to determine the issues set forth on Forms 50, 51, the Hearing Notice, and any other issues which were timely presented before the Commission.
2. Notice of the hearing was timely and properly served upon all parties of interest.
3. The parties agreed that venue was proper.
4. Claimant's average weekly wage and corresponding compensation rate are \$870.39 and \$580.29, respectively.
5. Claimant seeks benefits under the South Carolina Workers' Compensation Act based upon an injury he alleges occurred on June 21, 2013. Therefore, the South Carolina Workers' Compensation Commission has jurisdiction over this claim.

APA SUBMISSIONS

The following records were submitted into evidence pursuant to the Administrative Procedures Act.

Claimant's APA Submissions:

1. Records of Three Rivers Behavioral Health, dated 6/28/13-7/15/13 (pp. 1-6)
2. Records of Self-Memorial Hospital, dated 7/28/13-7/29/13 (pp. 7-25)
3. Records of Rebecca Norris, M.D., dated 9/4/13 (pp. 26)
4. Records of Greenville County Psychological Services Division Department of Public Safety, dated 7/30/13-10/17/14 (pp. 27-43)
5. Records of Manual R. Torres, LISW, CP, dated 1/20/14 (pp. 44-50)
6. Records of David R. Price, PhD, dated 11/17/15 (pp. 51-66)

7. Statements taken after lunch, dated 6/21/13 (pp. 67-74)
8. Negative Emails (pp. 75-78)
9. Statements by: Reggie Owens, Dwight Inman and Mike Leonard (pp. 79-83)
10. Courtney's Coaching Review Reports (pp. 84-107)
11. Deposition of Michael Battista, dated 10/15/15 (pp. 108-141)
12. Deposition of Scott Brown, dated 10/15/15 (pp. 142-155)
13. Deposition of Donnie Canady, dated 10/15/15 (pp. 156-201)
14. Deposition of Sharon Mayes, dated 10/15/15 (pp. 202-229)
15. Deposition of Reginald Owens, dated 10/15/15 (pp. 230-266)
16. Deposition of Michael Leonard, dated 10/15/15 (pp. 267-320)
17. Transcript-Motion to Vacate Order of Protection, dated 1/30/14 (pp. 321-386)
18. Deposition of Dr. Rebecca Norris, dated 3/23/18 (pp. 387-551)
19. Physician's Assessment Statement, Dr. Pat Mullen, dated 4/8/18 (pp. 552-557)
20. Deposition of Dr. Patrick Mullen, dated 6/25/18 (pp. 558-714)
21. Deposition of Velma Jones with exhibits (pp. 715-793)
22. DVD – Shots Fired

Defendant's APA Submissions:

23. Records of Dr. Rebecca Norris, Primary Care Associates, dated 12/5/12-5/6/14 (pp. 794-819)
24. Records of SC Department of Corrections, dated 3/3/15-5/19/17 (pp. 820-902)
25. Records of Manuel R. Torres, M. Torres Therapy, dated 1/20/14 (pp. 903-909)
26. Records of Patrick B. Harris Psychiatric Hospital, dated 7/17/06-9/13/06 (pp. 910-916)

27. Records of Pickens Detention Center, dated 7/3/06-7/17/06 (pp. 917-922)
28. Records of Greenville County Detention Center, dated 6/26/13-2/25/15 (pp. 923 – 1117)
29. Records of Dr. David Price, The Forensic Network, dated 10/2/13-10/26/15 (pp. 1118-1144)
30. Records of Abbeville Mental Health Clinic, dated 10/17/06-8/2/07 (pp. 1145-1165)
31. Records of Dr. Timothy Y. Dew, The Hand Center, P.A., dated 6/10/13 (pp. 1166-1180)
32. Records of Three Behavioral Health, dated 6/28/13-7/8/13 (pp. 1181-1249)
33. Records of Greenville Health System, dated 6/27/13-6/28/13 (pp. 1250-1266)
34. Records of AnMed Health, dated 7/31/01-7/27/13 (pp. 1267-1309)
35. Records of Anderson Radiology, dated 5/1/12-6/11/13 (pp. 1310-1316)
36. Personnel records from Ralph Hayes Toyota (pp. 1317-1321)
37. UPS Personnel File (pp. 1322-1394)
38. UPS Performance File (pp. 1395-1416)
39. UPS Coaching File (pp. 1417-1467)
40. UPS Emails (pp. 1468-1499)
41. UPS statements and investigation on alleged threats (pp. 1500-1550)
42. Transcript of Record, dated 2/12/15 (pp. 1551-1706)
43. Records of Anderson Family Court, dated 5/9/14 (pp. 1707-1709)
44. Personnel records from American Services, Inc., dated 6/30/06 (pp. 1710-1711)
45. Records of Department of Probation, Parole, and Pardon Services (pp. 1712-1727)
46. Records of Department of Corrections (pp. 1728-1733)

47. Records of Davies County District Court (pp. 1734-1737)
48. Emails to/from Claimant's Attorney regarding mileage and fees for deposed witnesses (pp. 1738-1739)
49. S.C. Inmate Detail Report (pp. 1740-1741)
50. Updated SC Department of Corrections Records (pp. 1742-1797)
51. Deposition of Courtney Ray Mitchell
52. Deposition of Dr. Robert Mullen
53. Deposition of Dr. Rebecca Norris
54. Deposition of Velma Jones

STATEMENT OF THE CASE

This claim involves a denied injury to Claimant's psyche, back, and arms which Claimant alleges occurred on June 21, 2013. Claimant seeks a finding of compensability and causally related medical treatment from the date of injury and continuing. Claimant further contends that he reached maximum medical improvement on the date of injury, June 21, 2013. Claimant is not alleging entitlement to temporary total disability benefits, but he does seek a finding of permanent and total disability entitlement. Defendants take the position that Claimant did not sustain an injury that arose out of and in the course of his employment as alleged. Defendants further assert that Claimant failed to provide proper notice of the alleged accident and that any claim for benefits as a result of a physical injury is barred by the Doctrine of *Latches*. Therefore, Defendants request Claimant's claim and request for benefits be denied in full.

EVIDENCE OF THE CASE

LIVE TESTIMONY

Testimony of Courtney Ray Mitchell (Claimant):

Claimant is a 45 year old male who has a Bachelor of Arts degree from the University of South Carolina Spartanburg in Interdisciplinary Studies.

Claimant testified regarding his work history. Claimant noted that he was a correctional officer for the South Carolina Department of Corrections. He noted that he left that position because he wanted to go where his talents, educational level, training and experience would be capitalized (Hearing Transcript pp. 40, ll. 20-24.) Claimant noted that he also worked for a brief period of time for the Department of Probation and Parole. (Hearing Transcript pp. 41, ll. 3-6.) Claimant worked in that position until he was terminated for a purported altercation with another agent. (Hearing Transcript pp. 41, ll. 12-16.) Claimant also noted that he worked for a law firm called Harris, Ragan, & Paterson, until he left because of an argument that he got into with the lead attorney. (Hearing Transcript pp. 43, ll. 11-18.) Claimant also acknowledged that he worked for a company called American Security at Easley Baptist Hospital for approximately one year. (Hearing Transcript pp. 45, ll. 10-16.) He initially gave his two weeks' notice to them after a year, but he got into a disagreement with his boss and left immediately. (Hearing Transcript pp. 45, ll. 17-21.) Ultimately, Claimant was placed on trespass notice by that Employer. (Hearing Transcript pp. 45, ll. 22- pp. 46, ll. 6.) After his trespass notice, Claimant returned to his place of employment where an altercation ensued with an Easley police officer. (Hearing Transcript pp. 46, ll. 7-11.) Claimant also testified that he was in the US National Guard as a military policeman until August of 2006.

Claimant went to work for UPS on March 30, 2012, as an inside sales representative (ISR). (Hearing Transcript pp. 52, ll. 16-19.) When Claimant began, he was in a training group, which is an academy of sorts to help new-ISRs learn the job. (Hearing Transcript pp. 53, ll. 15-18.) Claimant moved out of the training group and became a true ISR on or about May 14, 2012.

(Hearing Transcript pp. 53, ll. 19 - pp. 54, ll.2.) Claimant acknowledged the territory that he took over as an ISR, was previously operated by someone who was promoted because her sales were so good. (Hearing Transcript pp. 54, ll. 3-8.) He noted that his job as an ISR was to call on customers within the territory with the help of outside representatives to try and obtain more sales and/or keep the sales in the general area. (Hearing Transcript pp. 54, ll. 9-14.) Approximately 6 weeks after he started as a full-fledged ISR, Claimant was assigned a coach to help him become proficient at his job. (Hearing Transcript pp. 54, ll. 15-18.) Within a few months, Claimant began to have health issues that caused him to go out on disability from October 23, 2012 to October 31, 2012 and again on November 19, 2012 until December 14, 2012. (Hearing Transcript pp. 54, ll. 19 – pp. 55, ll. 4.)

Claimant noted that while he was working as an ISR he was evaluated by a quality performance review. (Hearing Transcript pp. 55, ll. 5-8.) Claimant's coach was Ms. Velma Jones. She was available to coach anyone within her territories to help provide feedback and help plan their day and develop strategies for success. (Hearing Transcript pp. 55, ll. 23 – pp. 56, ll. 6.) Claimant noted that when he struggled he was provided with help, but he noted his belief that it was not very good help. (Hearing Transcript pp. 56, ll. 10-16.) He did note, however, that when he did well, he was given positive encouragement from his supervisors. (Hearing Transcript pp. 56, ll. 17-20.)

Claimant testified that in mid-year 2013, his production was not where it was supposed to be. (Hearing Transcript pp. 56, ll. 25 – pp. 57, ll. 3.) Because his production was not where it was supposed to be, he requested to move to another job and his request was denied. (Hearing Transcript pp. 57, ll. 4-6.) Claimant said that he was informed that because he was not meeting the minimum standards on his quality performance review, he was not going to be able

to move to another position within the company. (Hearing Transcript pp. 57, ll. 7-11.) In a letter to his supervisor, Mr. Michael Battista, dated May 14, 2013, Claimant stated "I just found out yesterday that I have a degenerative condition that will continue to affect my motor skills in my hands to a point where it will be more difficult to operate the computer." (Hearing Transcript pp. 57, ll. 16-23.) Some six days later, Claimant sent another letter to the HR manager, Mr. Reggie Owens, telling him "I am requesting accommodation with my job due to medical limitations I am experiencing. Last week I found through a medical test that I am losing motor control in my hands and legs. We suspect this is a result of an injury I sustained while serving my country as a military police for the US Army." (Hearing Transcript pp. 58, ll. 2-11.) Claimant later stated that he informed Mr. Owens that he was exposed to an IED while serving in Iraq or Afghanistan. (Hearing Transcript pp. 58, ll. 15-18.) Claimant acknowledged at the hearing that he never served any time overseas and that he never sustained any service related injuries. (Hearing Transcript pp. 51, ll. 23 – pp. 52, ll. 4.)

Claimant testified that after he reported an alleged service related disability in May of 2013, Mr. Owens and a supervisor, Ms. Sharon Mayes, helped him file a disability claim. (Hearing Transcript pp. 58, ll. 19-23.) Claimant went out on disability on June 11, 2013, and he never worked again for UPS after that moment in time. (Hearing Transcript pp. 59, ll. 1-13.)

Claimant testified regarding his allegation of an injury occurring on or about June 21, 2013. He is alleging an aggravation of his mental condition and/or and aggravation of his back and bilateral carpal tunnel syndrome as a result of his work environment and duties. Claimant did not allege that any physical injury aggravated his mental condition. Claimant testified that when he initially became an ISR, he earned awards for how well his territory was doing. (Hearing Transcript pp. 13, ll. 11-15.) Claimant testified that by the fourth month his territory

changed and his customers seemed dissatisfied. (Hearing Transcript pp. 15, ll. 2-11.) Claimant believed that his coach, Ms. Velma Jones, was criticizing more than coaching. (Hearing Transcript pp. 16, ll. 18-22.) Regardless, Claimant and Ms. Jones shared aspects about their personal lives including insights on children, similar interests, and local ties that they had. (Hearing Transcript pp. 16, ll. 23 – pp.17, ll. 7.) Claimant trusted Ms. Jones and noted that he had no issues with her and that she was a friend he could take in confidence. (Hearing Transcript pp. 17, ll. 8-21.)

Claimant testified that he interacted with the person in charge of Greenville sales, Mr. Ken Baca, a few times, and he thought Mr. Baca was demeaning and sarcastic. (Hearing Transcript pp. 17, ll. 22 – pp. 18, ll. 4.) Claimant did not like Mr. Baca and did not trust him. (Hearing Transcript pp. 18, ll. 13-14.) Claimant also testified regarding his interaction with his supervisor, Mr. Mike Battista. Claimant thought Mr. Battista was a nice man that seemed overwhelmed. (Hearing Transcript pp. 18, ll. 15-21.)

Claimant testified that in September of 2012, his health started to deteriorate. (Hearing Transcript pp. 19, ll. 9-12.) He noted that he had a vascular condition that sent him to a cardiologist and later he had a gall bladder attack that required his gall bladder to be removed. (Hearing Transcript pp. 9, ll. 19-22.)

Claimant testified that his job at UPS required him to talk on the telephone, access multiple programs on the computer, and sit down most of the day. (Hearing Transcript pp. 20, ll. 1-9) The first time Claimant ever recognized that he had lower back issues was when he was working at a local Staples. He did not have any more problems with his back until he started feeling terrible pain at the end stages of his career at UPS. (Hearing Transcript pp. 20, ll. 10-18) Claimant noted that he never had any issues with his hands until his late career at UPS. (Hearing

Transcript pp. 20, ll. 19-21) Claimant stated his belief that sitting on the job was very painful. (Hearing Transcript pp. 21, ll. 11-12) Claimant testified that he did not report or file any workers' compensation claim while working for UPS. Instead, he filed for and received short term disability relative to the issues he had with his hands and back. (Hearing Transcript pp. 23, ll. 16-22)

Claimant felt overwhelmed as an ISR. (Hearing Transcript pp. 24, ll. 23 – pp. 25, ll. 1) He felt like he was getting negative responses from his team. (Hearing Transcript pp. 25, ll. 21 – pp. 26, ll. 4) Claimant also stated that he was miserable and that he believed that there was no way his coworkers would not see how miserable he was. (Hearing Transcript pp. 27, ll. 4-16) After approximately four months, Claimant's numbers started to decline and that caused his stress and worry about his job. (Hearing Transcript pp. 28, ll. 3-16) He noted that his supervisor would actually have him write himself up for failure to produce or meet his QPRs. (Hearing Transcript pp. 34, ll. 19-21) Claimant testified that he thought he could be fired at any day and he acknowledged that he was having difficulties with his position. (Hearing Transcript pp. 34, ll. 19-24)

Claimant testified that he thought he got along well with his coworkers. (Hearing Transcript pp. 29, ll. 11-19) He stated that he went to one of his coworker's houses for a barbeque and that he also had a barbeque at his mother's house attended by Ms. Jones. (Hearing Transcript pp. 29, ll. 11-19) On June 21, 2013, the date of his alleged accident, he was actually out to lunch with several of his coworkers. (Hearing Transcript pp. 30, ll. 11 – pp. 31, ll. 5)

During his employment at UPS, all of the employees were required to watch a video called Shots Fired. Claimant testified he believed that he had a nickname of "Shots Fired" after that video was shown. (Hearing Transcript pp. 26, ll. 5-18) Claimant testified that his coach, Ms.

Velma Jones, never made a positive statement about him. (Hearing Transcript pp. 35, ll. 21-24) Claimant testified that he told his supervisors that his position was causing him difficulties and asked for a transfer, but he was told that because his numbers were not up to standards, he could not change his position. (Hearing Transcript pp. 36, ll. 16 – pp. 37, ll. 3)

While Claimant admitted to mental health issues in 2006 and 2009, he reported that his issues in 2012 and 2013 were much worse. (Hearing Transcript pp. 37, ll. 4-10) Claimant admitted that he did not take any medication between 2009 and 2013, because he did not feel that he needed it. (Hearing Transcript pp. 37, ll. 22 – pp. 38, ll. 7) Claimant stated that he filed his claim because he wanted medical people that provided such wonderful care for his hands and back to be provided for and that he wanted to get provided for the “agony he went through and the embarrassment he went through as an employee at UPS.” (Hearing Transcript pp. 38, ll. 18-24) He stated that mentally he was hurt by the way he was treated by his supervisors and physically he was injured by sitting and typing, causing problems with his back and hands. (Hearing Transcript pp. 39, ll. 25 –pp. 40, ll. 8)

On cross examination, Claimant testified that he was involuntarily committed to Patrick B. Harris Mental Health Hospital in 2006 from July 17, 2006 until September 13, 2006. (Hearing Transcript pp. 47, ll. 7-12) Claimant acknowledged that after his release from Patrick B. Harris he was required to seek outpatient treatment from Abbeville Mental Health Center. (Hearing Transcript pp. 47, ll. 13-18) Claimant did not recall telling the providers at Abbeville Mental Health that he had become unreasonably fixated on a prior supervisor. (Hearing Transcript pp. 48, ll. 7-14) After completion of the court ordered one year program at Abbeville Mental Health, Claimant was supposed to stay on his medications. (Hearing Transcript pp. 48, ll. 19-23) However, he acknowledged that even while in the program, he was not compliant with his

medication treatment plan. (Hearing Transcript pp. 49, ll. 2-5) After release from the program, Claimant's mental issues did not subside. In 2008 he actually entered an Alford Plea for terroristic threats against a girlfriend. (Hearing Transcript pp. 49, ll. 18-21)

Claimant admitted that he last worked for UPS on June 11, 2013, because he went out on disability at that time. (Hearing Transcript pp. 61, ll. 11-16) Regardless, on June 21, 2013, Claimant went to a lunch with several UPS employees. (Hearing Transcript pp. 61, ll. 11-19) During this luncheon, statements were made to co-employees that were interpreted as threatening, so the police later showed up at his house to investigate. (Hearing Transcript pp. 62, ll. 20 – pp. 63, ll. 1) It was after the police came to his house that the Claimant really felt like he was upset. (Hearing Transcript pp. 63, ll. 2-6) In July of 2013, Claimant had a package delivered to his coach Ms. Jones at UPS that included his concealed weapons permit, three cell phones, and receipts from purchases made around areas of South Carolina near where Ms. Jones' family lives. (Hearing Transcript pp. 63, ll. 7-25) After the package delivery, Claimant was arrested, tried, and ultimately convicted of intimidating and threatening Ms. Velma Jones. (Hearing Transcript pp. 64, ll. 6) In fact, Claimant is currently serving ten years in prison for that conviction. (Hearing Transcript pp. 64, ll. 1-6)

Claimant testified that after the June 21, 2013 lunch and after his arrest, he was seen by a Dr. Jeffery Musick. Claimant remembered Dr. Musick, but did not recall telling Dr. Musick his employment history of short stints in a variety of jobs because he would get tired of them while thinking he could advance quicker in another position. (Hearing Transcript pp. 64, ll. 7-23) Claimant also vividly recalled Dr. Manuel Torres, but he could not remember phrasing his words to Dr. Torres that he was unable to maintain any job for any length of time due to the fact that he was neither compliant with his medications nor therapy. (Hearing Transcript pp. 65, ll. 2-11)

After his current incarceration, he lost his privileges on more than one occasion. In fact, in October of 2015, Claimant threw hot coffee on a guard and hit him in the face. (Hearing Transcript pp. 65, ll. 19-24) However, Claimant could not recall injuring his right hand in that altercation. (Hearing Transcript pp. 66, ll. 1-3) In September of 2018, Claimant aggravated his back doing one of the jobs he was doing at the prison. (Hearing Transcript pp. 66, ll. 17-22) Claimant also testified that in August 28, 2018, his hands became worse while grabbing pots and pans in his prior kitchen job. (Hearing Transcript pp. 67, ll. 1-7) Claimant acknowledged that after making complaints to the prison physicians about aggravations to his back and aggravations to his hands, he asked to be moved from those positions. (Hearing Transcript pp. 67, ll. 10-15) Claimant went on to note on redirect examination by his attorney that lifting big pots and pans definitely aggravated his hands and back. (Hearing Transcript pp. 68, ll. 3-8)

Testimony of Mr. Hardee Mitchell:

Mr. Hardee Mitchell testified that he is Claimant's 43 year old brother. He noted that he is the caregiver for his mother. He went on to note that Claimant had a little bit of a temper like his dad growing up, but he never believed that Claimant had any mental issues. (Hearing Transcript pp. 73, ll. 12-24) Mr. Mitchell noted his belief that Claimant's mental health was pretty good until recently, but he acknowledged that Claimant had some issues while in the National Guard and some issues while in Kentucky. (Hearing Transcript pp. 75, ll. 3-10) Mr. Mitchell also noted his belief that Claimant's mental condition appeared to worsen approximately six months after going to work for UPS. (Hearing Transcript pp. 1, ll. 25)

Testimony of Ms. Velma Gina Jones:

The testimony of Ms. Velma Gina Jones was taken by *de benne ese* deposition on April 13, 2018. According to her testimony, Ms. Jones was Claimant's coach during his tenure with

UPS. Essentially, she was a team lead who was responsible for helping to get new ISRs up to speed, by training them, identifying problems and helping them focus on the requirements of the job. (Deposition of Velma Jones pp. 6, ll. 14-20) Ms. Jones was not a supervisor and had no role in hiring, firing, or disciplining. (Id. at ll. 23-25) Ms. Jones coached Claimant in 2012 and 2013 along with multiple other employees. (Deposition of Velma Jones pp. 7, ll. 12-23) Ms. Jones noted that while training Claimant, the two of them would discuss where there was room for improvement, the setting of goals, and they would work to achieve those goals. (Deposition of Velma Jones pp. 12, ll. 7-19) Per Ms. Jones, Claimant was appreciative of coaching and their coaching sessions always ended on happy, positive notes. (Deposition of Velma Jones pp. 12, ll. 20 – pp. 13, ll. 6) Claimant had the opportunity to work with other coaches in addition to Ms. Jones. (Deposition of Velma Jones pp. 13, ll. 10-15) Even with coaching sessions from Ms. Jones and other coaches, Mr. Mitchell showed very little to minimal progress. (it. et. ll. 13-18)

Ms. Jones described Claimant's work day and his work station. The work days were from eight to five on Monday through Friday with two 15 minute breaks and an hour for lunch for a total of 7.5 hour shifts. (Deposition of Velma Jones pp. 13, ll. 25 – pp. 14, ll. 6) The work stations were called pods that could be raised and lowered so that employees could either sit or stand. (Deposition of Velma Jones pp. 14, ll. 7-16) Hand rests and keyboards could be adjusted. (Id. at ll. 16-18) Employees could even walk around while working in the pods. (Id. at ll. 23-24)

Ms. Jones and Claimant were close enough to talk about personal issues at work. (Deposition of Velma Jones pp. 14, ll. 25 – pp. 15, ll. 9) Claimant told Ms. Jones he was "blown up" while in Afghanistan. (Deposition of Velma Jones pp. 16, ll. 1-11) She and Mr. Mitchell as well as other employees attended group lunches and Ms. Jones even attended a barbeque at Claimant's mother's house with her young son. (Deposition of Velma Jones pp. 16, ll. 9-23)

Ms. Jones reiterated that she was a coach and not a supervisor and that there were many supervisors and managers that any employee could reach out to for help for any reason. (Deposition of Velma Jones pp. 17, ll. 2-18) Claimant never informed Ms. Jones that he had any problems with his hands or back or that he had any issues that he thought were attributable to his work conditions or his work environment. (Deposition of Velma Jones pp. 15, ll. 16-25)

Ms. Jones was in attendance with coworkers and Mr. Mitchell on June 21, 2013, at a luncheon that occurred at a local restaurant. Claimant was out of work on disability at that time. (Deposition of Velma Jones pp. 18, ll. 11-21) After that luncheon, Ms. Jones never spoke with Claimant again. (Id. at ll. 11-16) Ms. Jones noted that as a result of the luncheon and subsequent events, she was asked to make a statement for police and ultimately testify in criminal proceedings against Claimant for the threats that were made against her. In her testimony which is attached to her Deposition as exhibit one, Ms. Jones described Claimant's demeanor at the June 21, 2013 luncheon. Per Ms. Jones, Claimant began the conversation by talking about being upset at work and called one of his coworkers who was at the luncheon a derogatory name. Claimant then began to characterize this person as an "Arab or something, just put a turban on him and call him Samir and he could be a New York taxi driver." (Deposition of Velma Jones Ex. 1, pp. 15) Per Ms. Jones, Claimant began to get louder and louder at the table such that another table got up and moved. (Id.) There was also another table with children that requested to be moved away. (Id.) Claimant then started talking about a new sniper rifle with armor piercing bullets that he had obtained. (Id.) Later, Claimant described his supervisor, Mr. Mike Battista, as "shit," and noted that he would "take care of him." (Id.) He made comments about his prior military history that to Ms. Jones just did not make sense. (Id.) Claimant then went on to note "you know my purpose, my main drive, my focus, my... fixation is to have Ken Baca

removed from that place in a box.” Claimant then corrected himself and said Ken-Baca to be removed with his stuff beside him in a box. (Id.) Claimant then went on to talk about Ms. Sharon Mayes, calling her “Sister Madea.”(Id. at pp. 16) Claimant then got up from the table, threw some money on the table, and left. (Id.)

After being disturbed by the conversation during the luncheon, in particular the threats made to Mr. Baca, the references to guns and bullets and the military, Ms. Jones and the other employees in attendance at the luncheon went to Mr. Reggie Owens to report the actions of Claimant during the luncheon. (Id. at pp. 17) Approximately one week later, Ms. Jones and Mr. Battista started to receive texts perceived as threatening. (Id. at pp. 19)

In July of 2013, a delivery was made to Ms. Jones at work. The package was delivered by Darryl Bailey. (Id.) Mr. Bailey came to Ms. Jones with an envelope in his hands and said that a man had dropped off a leaf blower borrowed by Claimant with this package from Claimant and said take this package directly to Gina Jones, coach, immediately. (Id. at pp. 20) Ms. Jones and Mr. Bailey opened the package which contained a trespass notice for Dwight Inman and Ken Baca, Mr. Mitchell’s concealed weapons permit, three cell phones, two pieces of notepad paper, one from a hunting club, a receipt from a 7-Eleven, and three business cards for a tree nursery in Anderson. (id et. pp. 20, ll. 8 – pp. 21, ll. 25) Ms. Jones was particularly struck by the concealed weapons permit. (Id.) After reviewing the receipt from the 7-Eleven further, Ms. Jones realized that the gas station/ 7-Eleven was near her mom’s house. (Id. at pp. 22) Ms. Jones took from the package that Claimant knew where her mom lived and that he had a gun. (Id. at pp. 22) Ms. Jones noted that she was frightened by Claimant, as he made comments about coworkers and management that normal people would not do, and he threatened to take people out of their work in a box. (Id. at pp. 23)

The Depositions of Donald Louis Canady, Scott Brown, Michael Leonard, and Dwight Inman were entered into evidence. These Depositions provide cumulative and corroborative evidence regarding the events that took place at the luncheon on June 21, 2013. During that luncheon, Claimant talked about obtaining a military sniper rifle with armor piercing bullets. He also mentioned that he wanted his supervisor, Mr. Ken Baca, to go out in a box and then corrected himself by stating that he was going to help Mr. Baca carry his stuff out in a box.

The Deposition of Donald Canady, who was the security manager for UPS in 2013, was reviewed. Mr. Canady noted that he became aware of Mr. Mitchell on the day of the luncheon. (Deposition of Donald Canady pp. 9, ll. 7-11) After learning about the luncheon, Mr. Canady understood Claimant threatened a supervisor and made statements regarding a new sniper rifle and armor piercing bullets. (Deposition of Donald Canady pp. 12, ll. 12-19) Mr. Canady ultimately contacted his boss and then contacted local law enforcement in Anderson. (Deposition of Donald Canady pp. 13, ll. 6-14) Mr. Canady was under the impression that the officer was going to make a face to face visit for a "knock and talk" with Claimant to determine if there was a credible threat. (Deposition of Donald Canady pp. 14, ll. 1-9) After the police contacted Mr. Mitchell, Claimant called Mr. Canady very upset, and hung up on Mr. Canady without being willing to converse about the situation in any way shape or form. (Deposition of Donald Canady pp. 15, ll. 1-21) The night after the "knock and talk", Mr. Canady spoke with the visiting officer and understood that there was no viable threat. (Deposition of Donald Canady pp. 17, ll. 2-6) The following Monday, however, the same detective contacted Mr. Canady and stated that all precautionary measures needed to take care of other employees needed to be taken immediately, that there was a viable threat, that Claimant was dangerous, and that they were calling to alert UPS right then. (Deposition of Donald Canady pp. 17, ll. 7-15) At that point, Mr. Canady

arranged for there to be officers around the clock at the UPS facility where Claimant formerly worked. (Deposition of Donald Canady pp. 18, ll. 22 – pp. 19, ll. 6) Mr. Canady noted that later a box of items including Claimant's concealed weapons permit appeared at the facility. (Id. at ll. 15-25)

Testimony of Mr. Reginald Owens:

Mr. Owens testified that he was the former HR manager at the inside sales site of UPS. He retired in August of 2018. (Hearing Transcript pp. 83, ll. 2-9) Mr. Owens testified that his job required him to be responsible for employee retention, recruitment, coaching, and counseling of both employees and management. (Hearing Transcript pp. 83, ll. 19-24) His job duties also included placement of employees, staffing analysis, investigation, and documentation. (Hearing Transcript pp. 83, ll. 25 – pp. 84, ll. 1) Mr. Owens was part of the hiring process, and was involved in hiring Mr. Mitchell. After his hire, Mr. Mitchell came to Mr. Owens attention, because he was having attendance issues. (Hearing Transcript pp. 84, ll. 19-23) As a result of the inquiry, Mr. Owens had a meeting with Mr. Mitchell to determine what the problems were and to help identify ways to help Mr. Mitchell. (Hearing Transcript pp. 85, ll. 2-7) Mr. Mitchell informed Mr. Owens that he was having medical issues that were contributing to his absenteeism, so Mr. Owens helped Claimant apply for and receive disability benefits. (Hearing Transcript pp. 85, ll. 6-14) Initially, Claimant reported heart issues. Later, he told Mr. Owens that he was having problems with his legs and hands that he attributed to an IED he stepped on while in Afghanistan. (Hearing Transcript pp. 85, ll. 21-25) Claimant went on to tell Mr. Owens that he was going to lose feeling in both of his legs and hands because of the IED exposure. (Hearing Transcript pp. 85, ll. 21- pp. 86, ll. 3) At no time did Mr. Mitchell tell Mr. Owens that

any of the problems with his hands or legs were attributable to his job. (Hearing Transcript pp. 86, ll. 4-9) and (Hearing Transcript pp. 86, ll. 24 – pp. 87, ll. 3)

Mr. Owens testified regarding the proper handling of a report of a work related injury. He noted that paperwork is immediately completed and employees are sent for the necessary medical treatment that they need before all paperwork is sent on to the workers' compensation carrier. (Hearing Transcript pp. 87, ll. 4-15) Mr. Owens noted that Claimant never filled out any paperwork related to a work accident, and never reported a work accident. (Hearing Transcript pp. 87, ll. 16-18) To the contrary, Claimant reported his physical issues were unrelated to work, so Mr. Owens helped Claimant complete disability paperwork (Hearing Transcript pp. 87, ll. 19-24)

Mr. Owens testified that he first learned Claimant was alleging a workers' compensation claim in late 2014, early 2015 when he was contacted by the workers' compensation attorney for UPS. (Hearing Transcript pp. 89, ll. 15-20) Mr. Owens went on to note that when he first learned that Claimant was alleging a workers' compensation claim, it was his understanding that Claimant was seeking benefits for some sort of mental disorder. (Hearing Transcript pp. 89, ll. 21-25)

Mr. Owens testified that Claimant did reach out to him to discuss the possibility of moving to a different position within the organization while he was still employed. Mr. Owens informed Claimant that he could not move to a different position, because he was not meeting the minimum performance requirements of his current position at that time. (Hearing Transcript pp. 58, ll. 13-21) No transfer was available to any employee who was not proficient in their current job.

Mr. Owens testified regarding the showing of a "Shots Fired" video to all employees in the Greenville ISR office. He noted that the purpose of showing the video was a corporate decision made to have employees prepare for an active shooter situation, due to what was going on in the world at the time. (Hearing Transcript pp. 90, ll. 4-9) Mr. Owens noted that Claimant never complained to him about having to watch the video and never reported at any time that any co-employee was calling him any names at work. (Hearing Transcript pp. 90, ll. 10-15) In fact, Mr. Owens testified that if an employee reported a name calling or teasing situation, an investigation would be undertaken immediately and steps would be taken to stop that activity. (Hearing Transcript pp. 90, ll. 16-22) Mr. Owens noted that Claimant never complained about his supervisors, coach, or managers to him. (Hearing Transcript pp. 90, ll. 23 – pp. 91, ll. 1) To the contrary, Claimant reported to Mr. Owens that his supervisor and manager were helping him and he actually commended his coach, Ms. Velma Jones. (Hearing Transcript pp. 91, ll. 2-5) Mr. Owens confirmed that on June 21, 2013, when Claimant went to lunch with coworkers and threatening comments were made, Claimant was out of work on disability and was not an active employee at that time. (Hearing Transcript pp. 91, ll. 15-22)

Mr. Owens testified that in July of 2013, Mr. Mitchell had a package delivered to the UPS facility containing three cell phones, a concealed weapons permit, receipts, and a business card. (Hearing Transcript pp. 92, ll. 1-7) He noted that the receipts were from stores that were close to family members of Claimant's coach, Ms. Velma Jones and that the package was actually delivered to Ms. Jones. (Hearing Transcript pp. 92, ll. 8-12) Mr. Owens noted that after the package was delivered, he felt personally threatened. (Hearing Transcript pp. 92, ll. 17-19) Mr. Owens noted that he had worked for UPS for 41 years prior to that event and that with his knowledge of Claimant's military background, the things Claimant had purportedly done, he felt

Claimant was very capable of hurting him and other employees. (Hearing Transcript pp. 92, ll. 20 – pp. 93, ll. 10) After the package was delivered, Mr. Owens noted that UPS spent hundreds of thousands of dollars for additional security in light of Mr. Mitchell's actions. (Hearing Transcript pp. 93, ll. 17 – pp. 94, ll. 2)

Testimony of Ms. Sharon Mayes

Ms. Sharon Mayes testified that she is a manager of 83 inside sales representatives, four supervisors, and five coaches that cover three UPS sales territories. (Hearing Transcript pp. 106, ll. 20) She was in that position during the time Claimant worked for UPS as well. (Hearing Transcript pp. 106, ll. 24 – pp. 107, ll. 1) Ms. Mayes explained that the duties of an inside sales representative are to manage an area and work in conjunction with representatives in the field. (Hearing Transcript pp. 107, ll. 2-7) She noted that Mr. Mitchell did not meet the minimum expectations of an ISR, so they quickly assigned a coach to help him. (Hearing Transcript pp. 107, ll. 8-19) The coach's job was to help plan his sales acumen, answer any questions he may have, and to make sure there was a smooth transition from training to becoming a full ISR. (Hearing Transcript pp. 107, ll. 12-19) Ms. Mayes noted that it is not unusual for an ISR to have a coach. (Hearing Transcript pp. 107, ll. 20-25) Ms. Mayes noted that when Claimant was initially hired, he did receive some accolades as an ISR, because he inherited a territory from an ISR that was promoted due to her performance in the same territory. (Hearing Transcript pp. 108, ll. 11-25) The accolades were based on sales by the prior ISR. She noted that prior to becoming an ISR, Claimant went through approximately six weeks of training in a temporary/training group called the associates group. (Hearing Transcript pp. 109, ll. 4 – pp. 110, ll. 4) Ms. Mayes noted that towards the end of his tenure, Claimant did ask to be transferred from the ISR position back to the temporary, associates group. (Hearing Transcript pp. 110, ll. 5-15) She noted that he

also made a request to go to security, but there was not a security position available and Claimant was unable to transfer within the company because he was not meeting the minimum requirements of his job that he held at the time. (Hearing Transcript pp. 110, ll. 16-23)

Ms. Mayes noted that her job is to make sure that her ISRs are getting help and support, so she spoke with Mr. Mitchell and learned of his medical issues. (Hearing Transcript pp. 110, ll. 24 – pp. 11, ll. 17) Ms. Mayes then referred Mr. Mitchell to the HR manager, Reggie Owens, to help him with the disability process. (Hearing Transcript pp. 111, ll. 13-17) In fact, Ms. Mayes described her position as the cheerleader for her people to help them stay motivated and succeed. (Hearing Transcript pp. 112, ll. 1-15) While Mr. Mitchell did tell Ms. Mayes that he was having physical problems, he never told her the source of his reported physical problems. (Hearing Transcript pp. 112, ll. 16-23) Claimant informed Ms. Mayes that he had been exposed to an improvised explosive device while he was in the armed services. (Hearing Transcript pp. 113, ll. 2-17)

Ms. Mayes testified that throughout all of her dealings with Claimant, he never told her that he was having any problems with his supervisors, coach, or co-employees. (Hearing Transcript pp. 113, ll. 18-21) She noted that there is an open door policy and that if someone does not feel comfortable with the open door, there is a 1-800 number that can be called to report any issues that any employee feels uncomfortable with in the working environment. (Hearing Transcript pp. 113, ll. 22 – pp. 114, ll. 15)

Ms. Mayes testified regarding Claimant's work station and work duties. She noted that all ISRs had ergonomic chairs and work stations that would raise or lower so that employees could stand or sit and move around. (Hearing Transcript pp. 114, ll. 25 – pp. 115, ll. 10) Ms.

Mayes noted that when ISRs spoke to clients they would type into the computer to document the result of the calls. (Hearing Transcript pp. 115, ll. 25 – pp. 116, ll. 12)

Ms. Mayes went on to testify regarding her knowledge of the events surrounding the luncheon on June 21, 2013 and subsequent events. While Ms. Mayes was not at the luncheon, she did see the group of the employee attendees return after lunch. (Hearing Transcript pp. 117, ll. 14-17) She noted that she noticed something was wrong with them after lunch so she asked if they were okay. (Hearing Transcript pp. 117, ll. 18-24) Ms. Mayes testified regarding her understanding of the events of that luncheon and how they impacted her. She noted that she did not understand Mr. Mitchell's actions because all they were trying to do was help him. (Hearing Transcript pp. 118, ll. 5-8) She felt horrified by the comments that were apparently made at the luncheon. (Hearing Transcript pp. 118, ll. 13-17) Ms. Mayes reiterated that she had no idea Claimant was alleging a workers' compensation claim until she was contacted by the attorney for UPS. (Hearing Transcript pp. 118, ll. 25 – pp. 119, ll. 4)

Medical and Documentary Evidence:

All of the medical and documentary evidence submitted at the hearing was reviewed in this claim. A summary of the medical and documentary evidence I find most relevant to the issues at hand is noted below.

The records and Deposition testimony of Dr. Rebecca Norris show that she initially evaluated Claimant on August 25, 2011, to become an established patient. At that time, Claimant was reporting some swelling in his legs and hands and headaches. (Deposition of Dr. Rebecca Norris pp. 6, ll. 10-24) Dr. Norris made it clear that Claimant did not report any psychological concerns to her upon initial presentation. (Deposition of Dr. Rebecca Norris pp. 41, ll. 10-24) Dr. Norris went on to note that she had no understanding of whether or not

Claimant had a history of manic issues or psychological issues in his life prior to June of 2013. (Deposition of Dr. Rebecca Norris pp. 41, ll. 25 – pp. 42, ll. 6) In fact, Dr. Norris testified that she had no understanding, prior to her deposition, that Claimant was involuntarily committed to Patrick B. Harris in 2006 and that he had previously been described as psychotic and disoriented. (Deposition of Dr. Rebecca Norris pp. 42, ll. 16-24)

Dr. Norris noted that in her career she has treated people with bipolar disorder and that one of the signs and symptoms of bipolar disorder is the lack of ability of the patient to be able to understand what the problem is and how to fix it. (Deposition of Dr. Rebecca Norris pp. 44, ll. 12-24) She acknowledged that records that were presented to her for the first time showed that Claimant had a history of bipolar disorder and a history of reporting the lack of need of services to treat that condition. (Deposition of Dr. Rebecca Norris pp. 45, ll. 3-14) Dr. Norris testified that she did not treat Claimant for bipolar disorder and that bipolar disorder is not something that just goes away. (Deposition of Dr. Rebecca Norris pp. 48, ll. 2-4) She testified that the condition needs to be treated as it is a chronic condition that requires medication and/or counseling. (Deposition of Dr. Rebecca Norris pp. 48, ll. 12-21) She noted that people with the condition are prone to making grandiose statements. (Deposition of Dr. Rebecca Norris pp. 48, ll. 22-25) She also noted that someone with Claimant's diagnoses would be hypersensitive to someone telling them, even in the most usual way, that they are not meeting their production quota or becoming hypersensitive to authority or criticism if they are untreated. (Deposition of Dr. Rebecca Norris pp. 49, ll. 6-25)

Dr. Norris noted that she had no understanding of Claimant's outside of work activities and her only knowledge regarding Claimant's work activities was a job description provided by Claimant's Attorney at her Deposition. (Deposition of Dr. Rebecca Norris pp. 33, ll. 10-20) She

admitted that in her practice when she sends someone out for a specialist referral, she defers to the specialist on issues such as causation, diagnosis, and treatment. (Deposition of Dr. Rebecca Norris pp. 34, ll. 13 – pp. 35, ll. 6)

Dr. Norris acknowledged that she completed forms for Claimant to help him receive disability benefits. On one form dated July 5, 2013, she specifically noted that Claimant's diagnosis was back pain and that the condition was not related to work. (Deposition of Dr. Rebecca Norris pp. 36, ll. 16 – pp. 37, ll. 2) Dr. Norris went on to note, after reviewing a complete copy of her medical file, she could not identify any mention by Claimant that any of his problems she treated were related to work. (Deposition of Dr. Rebecca Norris pp. 54, ll. 3-20) Lastly, Dr. Norris noted that she has not evaluated or seen Claimant since May 6, 2014. (Deposition of Dr. Rebecca Norris pp. 55, ll. 5-7)

The records of The Hand Center show that Claimant was evaluated there on June 10, 2013 by Dr. Timothy Dew. At that time, Claimant reported bilateral hand pain that he noticed in April after he had a cardiac event. (Claimant's APA #31 pp. 1166) Dr. Dew noted Claimant had very mild carpal tunnel and possible peripheral neuropathy versus cervical radiculopathy (Id. at pp. 1167) Dr. Dew went on to note that he believed that most of Claimant's symptoms were not related to his carpal tunnel, especially from his exam and nerve studies. (Id.) Dr. Dew's records clearly note that Claimant presented there reporting that his problems were not related to work. (Id. at pp. 1168)

Records and Deposition Testimony of Dr. Patrick Bowman Mullen:

Dr. Mullen testified that he is a practicing psychiatrist who is not board certified. (Deposition of Dr. Mullen pp. 5, ll. 7-19) Dr. Mullen was retained by Claimant to prepare a physician assessment statement. Dr. Mullen acknowledged that he never met Claimant, never

spoke to Claimant, and he never reviewed Claimant's Deposition that was taken in this claim. (Deposition of Dr. Mullen pp. 6, ll. 3 – pp. 7, ll. 12) Dr. Mullen went on to note that Claimant's Attorney prepared the 31 question physician assessment statement for him. (Deposition of Dr. Mullen pp. 7, ll. 13-18) Dr. Mullen was asked specific questions regarding each of the pre-prepared statements noted in the physician assessment statement he signed. He noted that he had no personal knowledge of Claimant's job duties or work station. (Deposition of Dr. Mullen pp. 6, ll. 1-14) He noted clearly that he was not an orthopedist and that he would defer to a board certified orthopedist on issues of causation of orthopedic injuries. (Deposition of Dr. Mullen pp. 11, ll. 18-24) Dr. Mullen noted on the statement that he had no independent knowledge of any potential intervening causes for Claimant's physical issues. (Deposition of Dr. Mullen pp. 11, ll. 25 – pp. 12, ll. 13) However, when he completed the statement, he was unaware that Claimant was diabetic and had uncontrolled diabetes at the time or that he had a diagnosis of peripheral neuropathy. (Deposition of Dr. Mullen pp. 12, ll. 23 – pp. 13, ll. 18) When presented with that information, Dr. Mullen reversed his answer to question seven on his assessment. (Deposition of Dr. Mullen pp. 13, ll. 12-23)

In his physician assessment, Dr. Mullen also provided opinions regarding Claimant's carpal tunnel diagnosis. However, Dr. Mullen noted clearly that he would absolutely defer to Dr. Timothy Dew, a board certified orthopedist, on all issues of carpal tunnel causation. (Deposition of Dr. Mullen pp. 14, ll. 11-23) Dr. Mullen had no knowledge that Dr. Dew's records indicated that Claimant's problems were not related to work. (Deposition of Dr. Mullen pp. 14, ll. 24 – pp. 15, ll. 12) As such, he went on to note that his answer to number eight on the physician assessment statement was incorrect within a reasonable degree of medical certainty. (Deposition of Dr. Mullen pp. 15, ll. 13-19)

Dr. Mullen testified that conditions such as PTSD and bipolar disorder were treatable conditions with psychotherapy and medications. (Deposition of Dr. Mullen pp. 15, ll. 20 – pp. 16, ll. 18) Dr. Mullen acknowledged that a trigger of vulnerability to manic depression is not taking medications and not participating in psychotherapy. (Deposition of Dr. Mullen pp. 16, ll. 24 – pp. 17, ll. 7) Dr. Mullen went on to note that someone with diagnoses such as Claimant's is more likely to go into a depressive or manic state without treatment. (Deposition of Dr. Mullen pp. 18, ll. 16 – pp. 19, ll. 12)

Dr. Mullen noted that information provided to him by Claimant's Attorney did not include a report from Dr. Musick, in which Dr. Musick opined that Claimant was a manic in a manic phase that included grandiose and paranoid delusions and firmly sustained false beliefs from July 2006 to September 2006. (Deposition of Dr. Mullen pp. 21, ll. 3 – pp. 22, ll. 16) Dr. Mullen acknowledged reports stating that as far back as 2006 Claimant reported that he was unable to maintain a job for any length of time due to being non-compliant with his medication therapy and that he would only work for employers for short stints because he got tired of them thinking he would be better in a new position. (Deposition of Dr. Mullen pp. 23, ll. 19 – pp. 25, ll. 4) Dr. Mullen acknowledged that someone with Claimant's diagnoses was prone to react poorly to people in authority including policemen or a boss. (Deposition of Dr. Mullen pp. 25, ll. 2-13) Dr. Mullen noted that in his untreated, psychiatric condition, Claimant generally may have a different grasp on reality than someone without his untreated diagnoses. (Deposition of Dr. Mullen pp. 30, ll. 6-17) Dr. Mullen also noted that it is more likely than not with Claimant's untreated psychiatric diagnoses that even having a coach come work with him could be perceived as picking on him as opposed to trying to help him succeed in his job. (Deposition of Dr. Mullen pp. 33, ll. 5-17) Dr. Mullen acknowledged that the records he received prior to

completing his physician's assessment did not contain the report of Dr. Musick and did not contain information regarding Claimant's prior plea to terroristic threats or references to numerous prior jobs that Claimant left due to either altercations with co-employees or employers. (Deposition of Dr. Mullen pp. 34, ll. 4 – pp. 35, ll. 12) In fact, Dr. Mullen reported being puzzled by the gap in time contained within the records provided to him. (Deposition of Dr. Mullen pp. 35, ll. 5-25) Dr. Mullen acknowledged that had he actually had the opportunity to sit down with the Claimant he would have been on a different foundation and would have had a much more present state exam versus just a review of records. (Deposition of Dr. Mullen pp. 37, ll. 1 – pp. 38, ll. 1)

Dr. Mullen acknowledged that in reviewing the medical records provided to him, he could find no indication where Claimant actually said he believed his problems with his back or his hands were related to his work. (Deposition of Dr. Mullen pp. 39, ll. 20 – pp. 40, ll. 5) Dr. Mullen noted that after reviewing the records presented to him at his Deposition and being provided the information regarding Claimant's untreated psychiatric diagnoses, Claimant has a pattern of problems with prior employers. (Deposition of Dr. Mullen pp. 42, ll. 19-25) Dr. Mullen acknowledged that the records presented to him show that Claimant just did not tell the truth and that was consistent with his diagnoses. (Deposition of Dr. Mullen pp. 43, ll. 1-11) Dr. Mullen went on to note that based on the information provided to him in his Deposition he could not state within a reasonable degree of medical certainty what caused Claimant to make comments in June of 2013 that were either perceived as threatening or were in fact threatening. (Deposition of Dr. Mullen pp. 48, ll. 12 – pp. 49, ll. 14)

Based on the foregoing facts on the record I hereby issue the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Claimant currently alleges that he sustained an injury by accident on June 21, 2013, in the form of an aggravation to his psyche, lower back, and bilateral carpal tunnel syndrome. Further, Claimant asserts he is at maximum medical improvement for all conditions as of the date of injury.
2. Claimant filed his first Form 50, Request for Hearing, on December 23, 2014. On that form, Claimant alleged a mental claim only. A hearing on that Form 50 was set to occur on October 27, 2017, before the undersigned Commissioner. After the pre-hearing conference, Claimant withdrew his Request for Hearing.
3. Claimant filed a new Form 50, Request for Hearing, on November 16, 2017. On that Request for Hearing, filed four years and five months after the date of the alleged accident, Claimant alleged a mental injury only.
4. On February 2, 2018, four years and eight months after the alleged accident, Claimant filed an Amended Form 50, alleging a mental injury and exacerbation of the lumbar spine and bilateral carpal tunnel.
5. The record is replete with evidence that Claimant's low back, carpal tunnel syndrome, and psychological condition predate the alleged date of injury in this matter. The remaining question is whether these issues were aggravated by the employment. I find they were not.
6. With regard to the aggravation of the bilateral carpal tunnel syndrome and the low back, I find no record in this voluminous file that Claimant was asserting any aggravation to these scheduled conditions until his Form 50 dated February 2, 2018, nearly five years

after his alleged date of injury. Furthermore, Claimant asserted on numerous occasions that his hands, legs, and back issues were due to stepping on an IED while serving in the US Army. Of particular note, Claimant never served in the army and was never in Afghanistan. Also, on his long term disability form, (Def. APA pp. 808) Claimant asserts that his back issues are unrelated to his employment. Also, Dr. Dew, a board certified orthopedist who saw Claimant regarding his bilateral hand issues, noted Claimant's problems were not related to employment (Def. APA pp. 1168) and noted his belief that the bulk of Claimant's symptoms were likely not related to carpal tunnel. (Id. at pp. 1167)

7. While Claimant did obtain a physician assessment statement from Dr. Robert Mullen, any inference in the questionnaire answered by Dr. Mullen is significantly offset by a thorough reading of his Deposition. First, I note that Dr. Mullen never examined, met, or even spoke with Claimant. Second, Dr. Mullen is a psychiatrist and has never practiced any other form of medicine since he was licensed in 1978. He specifically states that he would defer on any issues that were relative to causation of the back and carpal tunnel syndrome to physicians that practice in those areas. Third, it was clear that his conclusions were based on inaccurate and/or missing information. Dr. Mullen even noted being perplexed by gaps in the information provided to him.
8. The Deposition testimony and records of Dr. Norris are insufficient to establish causation for the physical components of this matter. Dr. Norris made it very clear that even after a thorough review of all of her records, she could find no reference to any complaint by Claimant of his problems being related to work. Dr. Norris noted that she had no understanding of Claimant's outside of work activities, had limited understanding of his

medical history, and had no understanding of his work activities at UPS. She then went on to note that she has not even evaluated Claimant since 2014. While Dr. Norris states that working nine to ten hours a day sitting, would make his back issues worse, it was clear that Dr. Norris did not have accurate information regarding Claimant's work station, work duties, or even his work hours. Further, Dr. Norris admitted unequivocally that she would defer to specialists on issues of causation.

9. I find insufficient evidence in the records to support Claimant's work caused or aggravated his bilateral carpal tunnel syndrome and lower back issues.
10. I find entitlement to benefits for back and bilateral carpal tunnel syndrome, even if they were aggravated, would be barred by the equitable Doctrine of *Laches*. The first pleading alleging any injury or aggravation to Claimant's back or arms was on a Form 50 filed by Claimant on February 2, 2018, four years and eight months after the alleged accident. Claimant never informed his Employer at any time before February 2, 2018, that he was alleging anything other than a mental/mental claim. This delay by Claimant to report and / or prosecute a claim for problems he believed were attributable to his work was unreasonable and deprived Defendants with the opportunity to defend the claims until much later when many of the witnesses had moved or left employment. Further, Claimant provided no reasonable explanation for his delay to prosecute or even allege these injuries were related to his work. Further, Claimant clearly testified that his back and arm issues were aggravated by work he performed in prison, well after leaving UPS.
11. I find Defendants were never provided notice of this claim until a Form 50 dated December 23, 2014, nearly 18 months after the date of alleged injury. At that time, the claim was limited only to a mental claim. Claimant's testimony that he did not want to

provide notice because he did not want to place his long term disability benefits at jeopardy does not rise to the level of a reasonable excuse as contemplated in South Carolina Code Ann. §42-15-20. Claimant's delinquency in providing notice was purely for personal gain. Claimant's delinquency caused prejudice to Defendants by failing to provide them with enough time to reasonably investigate Claimant's assertions until almost 18 months had elapsed. Therefore, Claimant's request for benefits, even assuming his injuries arose out of the course of employment, is denied based on failure to provide timely notice.

12. I also note that Claimant's purported reason for filing this claim was to ensure that his medical providers received payment for their services and for someone to hear about what he went through at UPS and to hopefully prevent someone from going through the same thing.
13. I would be remiss if I failed to note that Claimant was fired by Defendants on August 16, 2013 for intimidating another UPS employee who was a witness in a separate, but somewhat related criminal matter. Claimant was charged with intimidation, found guilty and sentenced to ten years in prison for his actions.
14. I find the record as a whole is insufficient to establish causation as it related to aggravation of the psyche. Claimant's records are replete with prior psychological problems. In 2006 Claimant was involuntarily committed after an altercation involving a police officer. Claimant was diagnosed with bipolar disorder at that time. While Claimant was supposed to receive ongoing treatment for that disorder, Claimant failed to acknowledge the gravity of his disease and even when on treatment, did not comply with his treatment regimen. In 2008, Claimant was involved in an altercation in Kentucky that

led him to enter an Alford plea of terroristic threats. Claimant admitted that he was not taking his medication in 2012 and 2013 and was not attending counseling for his known psychiatric conditions. The record clearly shows Claimant had a history of difficulties and altercations with prior employers and employees. The record also shows that Claimant had a poor work history that usually involved only short stints with the employer because he felt like his skills would be better suited in a different position. In reviewing the medical records and medical opinions, it is clear that physicians believe that Claimant's poor work history related to continued employment was a sign and symptom of him refusing to take care of his psychological disease with medication and therapy. Further, there is insufficient testimony that any compensable physical injury aggravated Claimant's mental condition.

15. While Claimant has alleged an aggravation of his mental condition, he has failed to show his mental condition was aggravated by any compensable physical injury, and he has failed to show any aggravation occurred from unusual and extraordinary conditions of employment. The records establish that the conditions that Claimant complains of were merely normal work conditions and to the credit of UPS, they went above and beyond to work with Claimant by providing coaching and help. It was only because of Claimant's actions that he was terminated by UPS.
16. I note that the alleged date of injury, June 21, 2013, the day Claimant went to lunch with co-employees where the purported threats were made, is after Claimant went out of work on disability (June 11, 2013). Therefore, Claimant was not even working on the date of his alleged injury. Even if Claimant's alleged injury arose out of his employment, which it did not, it did not arise in the course of employment.

17. For all of the reasons stated above, Claimant's request for benefits is denied in its entirety.

CONCLUSIONS OF LAW

1. South Carolina Code Ann. §42-1-160 is applicable in defining an injury by accident. Based on my Findings of Fact, Claimant has not shown that he sustained an injury by accident arising out of and in the course of his employment. Claimant has failed to meet his burden by preponderance of the evidence that he sustained an aggravation of a preexisting condition as it pertains to his back, arms, carpal tunnel syndrome and psyche. Claimant did not show a compensable physical injury aggravated his mental condition. Additionally, he did not prove that his mental condition was caused by or aggravated by unusual and extraordinary conditions of employment.
2. The Doctrine of *Latches* is applicable in that Claimant waited almost five years before asserting injuries to his back or carpal tunnel syndrome. His delay was unreasonable, prejudiced Defendants and no reasonable explanation was provided to account for the delay. Thus, he is barred from receiving benefits under the Doctrine of *Latches*, even assuming he sustained a compensable injury, which he did not. See Richey v. Dickinson and Travelers Prop. Cas. Co., 359 S.C. 609, 598 S.E2d 307 (Ct. App. 2004)
3. South Carolina Code Ann. §42-15-20 is applicable in showing the time frame within which a Claimant must provide notice of any injury by accident. Claimant in this matter did not provide timely notice, there was no reasonable excuse for his delay, and Defendants were prejudiced by his delay. Claimant reported an alleged mental injury almost 18 months after the purported accident and first provided notice of an alleged

aggravation to his back and bilateral carpal tunnel syndrome almost five years after the alleged injuries occurred.

4. South Carolina Code Ann. §42-17-40 is applicable in defining the conduct of hearings and the rendering of awards.

ORDER

Based on the foregoing testimony, APA submissions, Findings of Fact and Conclusions of Law, **IT IS HEREBY ORDERED** that Claimant did not meet his burden of establishing an injury by accident arising out of and in the course of his employment. Therefore, his request for benefits pursuant to the South Carolina Workers' Compensation Act is hereby denied.

IT IS FURTHER ORDERED that even if Claimant had established an injury by accident arising out of and in the course of his employment, his request for benefits would be denied for failure to provide proper notice and by the Doctrine of *Latches*.

AND IT IS SO ORDERED.



T. Scott Beck, Commissioner

CERTIFICATE OF SERVICE

This is to certify the undersigned has this date served this order in the above entitled action upon all parties to this cause by sending an electronic copy hereof by electronic mail addressed to the attorney or attorneys for said parties or by depositing a copy hereof, postage paid, in the United States certified mail addressed to any unrepresented party.

February 14, 2019

By: Shawnee DeBruhl, Administrative Assistant to Commissioner Beck



Claimant's Name: Courtney Ray Mitchell SSN: _____ Employer's Name: United Parcel Service
Address: Evans Correctional, 610 Hwy. 9 West Address: 204 Halton Road
City: Bennetsville State: SC Zip: 29512 City: Greenville State: SC Zip: 29607
Home Phone: _____ Work Phone: _____ Insurance Carrier: Aetna Insurance
Preparer's Name: Donald L. Smith, Esquire Law Firm: Atty. Office of Donald Smith Preparer's Phone #: 864 642 9284

REQUEST FOR COMMISSION REVIEW

Request for Commission Review by claimant employer (check one) Date of injury: June 21, 2013

The undersigned makes application for review of the findings of the Commissioner in the above-captioned case. The request for review is based on the following grounds: (State the grounds of your appeal in the form of questions presented. Each question presented must contain a concise statement of one proposition of law or fact. Refer to evidence by title and exhibit number. Use additional pages if necessary).

Please see attachment for the basis of Grounds for Appeal .

(Check one) Oral argument is is not requested. Appellant's request for oral argument is waived if not indicated on this form.

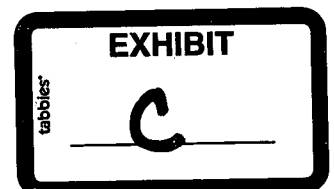
I certify that I have served this document pursuant to R.67-211 by delivering a copy to Mr. O. Shayne Williams, Esquire
Name
PO Box 1349 Myrtle Beach SC 29577

on the 27th day of February, 2019 by first class mail personal service certified mail.

DL Smith Attorney February 27, 2019
Preparer's Signature Title Date

Check this box if you are not represented by an attorney.

If the claimant appeals and is representing himself or herself, the Judicial Department will prepare the additional copies of this form and serve this form on the opposing party. R.67-701B. Otherwise, file the original and four copies of this form with the Judicial Department. The appeal must be postmarked no later than 14 days from the date of service of the Hearing Commissioner's decision. R.67-701 and R.67-205. Attach the filing fee to this form. Attach a Form 32 if you are unable to pay the filing fee. Refer to R.67-701 through R.67-711 for additional information.



FORM 30 ADDENDUM
Grounds for Appeal
Courtney Ray Mitchell
WCC# 1322347

1. Claimant currently alleges that he sustained an injury by accident on June 21, 2013, in the Form of an aggravation to his psyche, lower back, and bilateral carpal tunnel syndrome. Further, Claimant asserts he is at maximum medical improvement for all conditions as of the date of injury.
2. Claimant filed his first Form 50, Request for Hearing, on December 23, 2014. On that form, Claimant alleged a mental claim only. A hearing on that Form 50 was set to occur on October 27, 2017, before the undersigned Commissioner. After the pre-hearing conference, Claimant withdrew his Request for Hearing.
3. Whether the Single Commissioner erred as a matter of fact and law in Fact 3, by implying the defense was prejudiced by what was common knowledge
4. Whether the Single Commissioner erred as a matter of fact and law in Fact 4, by not considering the fact Claimant's mental issues were highly publicized to the entire UPS plant on June 21, 2013; and, he was on disability due in part to his hands and his back.
5. Whether the Single Commissioner erred as a matter of fact and law in Fact 5 by failing to give weight to the expert witnesses.
6. Whether the Single Commissioner erred as a matter of fact and law in Fact 6, in failing to recognize that the issues for which Claimant was originally on disability in the beginning of June 2013.
7. Whether the Single Commissioner erred as a matter of fact and law in Fact 7 in that Dr. Mullen did not withdraw his opinion that the manner in which UPS addressed Mr. Mitchell was the leading cause of Mr. Mitchell's exacerbation of his bipolar.

8. Whether the Single Commissioner erred as a matter of fact and law in Fact 8 in finding that Dr. Norris did not believe that sitting for eight hours at a computer would not exacerbate his back issues, as well as his hand issues. I find insufficient evidence in the records to support Claimant's work caused or aggravated his bilateral carpal tunnel syndrome and lower back issues.
9. Whether the Single Commissioner erred as a matter of fact and law in Fact 9 in finding that *Laches* applies in this matter given the fact that the defense was aware of the health issues in June of 2013.
10. Whether the Single Commissioner erred as a matter of fact and law in Fact 10 in finding that the defendants did not have notice of the mental issues with which claimant was struggling on June 21, 2013.
11. Whether the Single Commissioner erred as a matter of fact and law in Fact 11 by discussing Claimant's criminal case when that case had nothing to do with his mental health; and, therefore, was irrelevant.
12. Whether the Single Commissioner erred as a matter of fact and law in Fact 12 when he finds that the record of aggravation is insufficient when acts of aggravation were systemic, including calling Claimant "Shots Fired!"
13. Whether the Single Commissioner erred as a matter of fact and law in Fact 13 in not recognizing when Dr. Mullen acknowledged that Claimant's "coach" was at the epicenter of his destruction.
14. Whether the Single Commissioner erred as a matter of fact and law in failing to recognize employer's abuse of Claimant at the work place culminated with the event of June 21, 2013.

15. Whether the Single Commissioner erred as a matter of fact and law in not using the proper standard in concluding Claimant had not proven his case.

CONCLUSIONS OF LAW

1. Whether the Single Commissioner erred as a matter of fact and law in Conclusion 1 in finding that Claimant did not prove that his disability stemmed from the exacerbation of his bipolar condition, hand difficulties and back issues; and, in subsequently denying him benefits pursuant to South Carolina Code Ann. §42-1-160.
2. Whether the Single Commissioner erred as a matter of fact and law in Conclusion 2 in applying *Laches* when all of the health issues which Claimant raised were known in June of 2013.
3. Whether the Single Commissioner erred as a matter of fact and law in Conclusion 3 in finding that Claimant failed to give proper notice to the defendants pursuant to South Carolina Code Ann. §42-15-20, when the assessment of the co-workers at lunch on June 21, 2013 was that Claimant had a “psychotic break”; and, he held a grudge against UPS and his co-workers for injuring him and his family.

ORDER

Whether the Single Commissioner erred as a matter of fact and law in Order 1 in failing to use the proper evidentiary standard in issuing his order.

Whether the Single Commissioner erred as a matter of fact and law in Order 2 in applying *Laches* in rendering his decision.

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

Courtney Ray Mitchell,)
Claimant,)

vs.)

United Parcel Service,)
Employer,)

and)

Liberty Insurance Corporation,)

Carrier,)

Defendants.)

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

CERTIFICATE OF SERVICE BY MAIL

W.C.C. File No.: 1322347

THE UNDERSIGNED person deposes and says that he served a copy of a Form 30 for the above-referenced Claimant in this action, by placing a copy thereof in an envelope addressed to the party at the address shown below, which envelope was sealed and postage thereon fully prepaid, and deposited in the United States Mail at Anderson, South Carolina, and that there is regular communication by the United States Mail between the place of mailing and the place addressed as follows:

Date: 2/27/2019



Donald L. Smith, (SC Bar#6699)
Attorney for Claimant
ATTORNEY OFFICE OF DONALD SMITH
122 N. Main Street
Anderson SC 29621
Telephone: (864) 642-9284
Facsimile: (864) 642-9285
attorneydonaldsmith@gmail.com

MAILED TO:

O. Shayne Williams, Esquire
McAngus Goudelock & Courie, LLC.
P O Box 1349
Myrtle Beach SC 29578

South Carolina Workers' Compensation Commission

1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
(803) 737-5723



WCC File #: 1322347
Carrier File #: 555C62858
April 12, 2019

FORM 31 BRIEFING SCHEDULE AND NOTICE OF APPELLATE HEARING

United Parcel Service Inc. v Courtney Mitchell

Filing Date for Appellant's Brief: May 12, 2019

Subject: Set on Review.
Date: 06/17/19 at 01:30 PM
**Location: South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500
Columbia, SC 29201**

You are receiving this notice pursuant to South Carolina Regulation 67-704. This matter is to be set for Full Commission Review on the above date. Regulation 67-705(A) requires the appellant to file a brief which includes a statement of the case, questions presented, argument, and the conclusion by the date above. Pursuant to Regulation 67-205, please submit your brief electronically through the **Upload** functionality in eCase located on the Commission's website at www.wcc.sc.gov.

The claimant must attend when not represented by an attorney or when disfigurement is involved. Corporations must be represented by an attorney, and uninsured employers must attend.

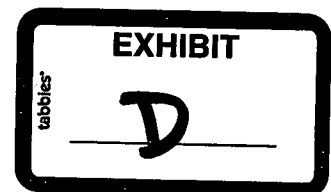
Pursuant to South Carolina Regulation 67-705, the Respondent may file a responding brief within fifteen (15) days of service of Appellant's brief. Appellant may then file a reply brief within ten (10) days of service of Respondent's responding brief. All briefs must be received by the Workers' Compensation Commission at least five (5) days before the scheduled date for review.

For questions regarding this matter, please visit eCase Status at www.wcc.sc.gov or contact the Judicial Department of the South Carolina Workers' Compensation Commission at (803) 737-5739.

The Commission requests your presence thirty minutes prior to your scheduled oral argument.

This matter is set before: Panel A

CERTIFICATE OF SERVICE – This is to certify the undersigned has served this notice in the above entitled action upon all parties to this cause by sending a copy hereof by electronic mail or United States mail. Unrepresented parties were served by United States Postal Service first class postage.



By: Eugenia Hollmon, SC Workers' Compensation, April 12, 2019

Party

Employee: Courtney Mitchell

Employer: United Parcel Service Inc.
Carrier: Liberty Insurance Corporation

Attorney

Donald L. Smith
attorneydonaldsmith@gmail.com
864-642-9284

O Shayne Williams
shayne.williams@mgclaw.com
843-848-6018

South Carolina Workers' Compensation Commission

1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
(803) 737-5723



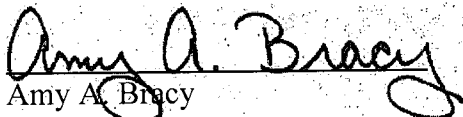
WCC File #: 1322347

Date of Injury: 06/21/2013

ADMINISTRATIVE ORDER

Courtney Mitchell v. United Parcel Service Inc.
WCC File No: 1322347

The Request for Commission Review in the above captioned case is dismissed. The appellant brief was not timely filed pursuant to R.67-705 H(3). Brief was due by May 12, 2019 and no extension was requested.


Amy A. Bracy
Judicial Director

Date: May 23, 2019

CERTIFICATE OF SERVICE

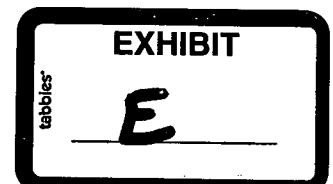
I hereby certify on May 23, 2019, I served this document on the parties listed below by electronic mail or depositing a copy hereof, postage prepaid, in the United States mail and addressed as follows:

Donald L. Smith
Attorney At Law
122 N. Main Street
Anderson, SC 29621

United Parcel Service Inc.
55 Glenlake Pkwy NE
ATLANTA, GA 30328

O Shayne Williams
McAngus Goudelock & Courie, LLC
PO Box 1349
Myrtle Beach, SC 29578

By: Eugenia C. Hollmon, Judicial Department



STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)
Courtney Ray Mitchell,)
Appellant,)
vs.)
United Parcel Service,)
Employer,)
and)
Liberty Insurance Corporation,)
Carrier,)
Respondents.)

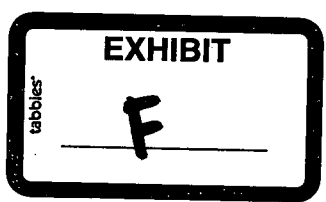
BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

**MOTION TO VACATE THE ORDER OF
DISMISSAL AND TO REINSTATE THE
APPEAL**

W.C.C. File No.: 1322347

Pursuant to Rule 6 of the South Carolina Rules on Civil Procedure (SCRCP), Appellant respectfully moves this Commission to vacate the Order of Dismissal, dated May 23, 2019, and to reinstate the Appeal, and further states to this Commission the following:

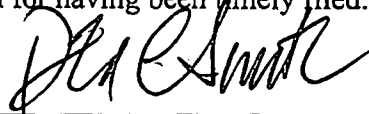
1. Appellant's Brief was due on May 12, 2019.
2. May 12, 2019 was a Sunday.
3. Rule 6 SCRCP provides "In computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or a State or Federal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor such holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and holidays shall be excluded in the computation. A half holiday shall be considered as other days and not as a holiday.



4. Pursuant to the above-mentioned rule, Appellant has until Monday, May 13, 2019, to file his Appellant's Brief.
5. Appellant's Brief was filed on May 13, 2019, as evidenced by the Certificate of Service and the envelope post marked May 13, 2019.
6. Since service is complete upon mailing pursuant to Rule 5 (b) of SCRCP, Appellant's Brief was timely filed.

CONCLUSION

For the foregoing reasons, Appellant respectfully moves this Commission to vacate its Order of Dismissal and to reinstate the said Appeal for having been timely filed.



Donald L. Smith, (SC Bar#6699)
122 N. Main Street
Anderson SC 29621
Telephone: (864) 642-9284
Facsimile: (864) 642-9285
attorneydonaldsmith@gmail.com
Attorney for Appellant

Anderson, South Carolina
June 10, 2019

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)
Courtney Ray Mitchell,)
Appellant,)
vs.)
United Parcel Service,)
Employer,)
and)
Liberty Insurance Corporation,)
Carrier,)
Respondents.)

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

MOTION FOR CONTINUANCE

W.C.C. File No.: 1322347

Appellant, by and through his counsel of record, Donald L. Smith, respectfully makes the following Motion for Continuance:

1. A Full Commission Review of the above-mentioned case has been set on June 17, 2019, at 1:30 p.m.
2. That Plaintiff's counsel would not be able to attend the hearing pursuant to Rule 601(a)(12) SCACR.
3. That Plaintiff's counsel has pre-trial the same date and time at the Summary Court in Greenville County, S.C. for *State v. Samantha Honig, C.A. No. 2018-23-70466611* for the week of June 17-21, 2019.
4. That proof of the aforementioned matter is in the court roster is submitted and attached with this Motion.
5. That the Court would not be prejudiced by this respectful request.

WHEREFORE, the undersigned counsel respectfully requests that this matter be continued.

{SIGNATURE TO FOLLOW}

Anderson, South Carolina
June 10, 2019

Respectfully Submitted,



Donald L. Smith, (SC Bar#6699)

122 N. Main Street

Anderson SC 29621

Telephone: (864) 642-9284

Facsimile: (864) 642-9285

attorneydonaldsmith@gmail.com

Attorney for Appellant

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

Courtney Ray Mitchell,)
Claimant,)

vs.)

United Parcel Service,)
Employer,)

and)

Liberty Insurance Corporation,)
Carrier,)
Defendants.)


BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

CERTIFICATE OF SERVICE BY MAIL

W.C.C. File No.: 1322347

THE UNDERSIGNED person deposes and says that he served a copy of Appellant's Motion to Vacate the Order of Dismissal and to Reinstate the Appeal, and Motion for Continuance upon the Defendants, by and through their counsel of record, Mr. O Shayne Williams, Esquire, by placing a copy thereof in an envelope addressed to the party at the address shown below, which envelope was sealed and postage thereon fully prepaid, and deposited in the United States Mail at Anderson, South Carolina, and that there is regular communication by the United States Mail between the place of mailing and the place addressed as follows:

Date: June 10, 2019



Donald L. Smith, (SC Bar#6699)
122 N. Main Street
Anderson SC 29621
Telephone: (864) 642-9284
Facsimile: (864) 642-9285
attorneydonaldsmith@gmail.com
Attorney for Appellant

MAILED TO:

O. Shayne Williams, Esquire
McAngus Goudelock & Courie, LLC.
P O Box 1349
Myrtle Beach SC 29578

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 1322347

COURTNEY RAY MITCHELL,

Employee,

Claimant,

vs.

UPS, INC.,

Employer,

AND

LIBERTY MUTUAL

Carrier,

Defendants.

**DEFENDANTS' REPLY TO
CLAIMANT'S MOTION REINSTATE
APPEAL**

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION AND DONALD L. SMITH, ESQUIRE:

Claimant's attorney filed a Motion to Reinstate Appeal on June 10, 2019. This motion was received by Defendants on June 14, 2019. Defendants hereby respond to Claimant's motion as follows:

1. Claimant filed a timely Form 30, Appeal to an Order that was issued by the Commission on February 14, 2019. Subsequently, the Commission set this matter for oral argument before the Full Commission to occur on May 20, 2019. Prior to the May 20, 2019 Full Commission review date, Claimant's attorney wrote a letter requesting that the appeal be rescheduled due to a conflict.
2. The Commission rescheduled the Full Commission review hearing to occur on June 17,



2019.

3. Claimant's Appellate brief to the full Commission was due on May 13, 2019. Neither the Defendants, nor the Commission received a brief from the Claimant's attorney. In fact, as of the date of filing of this Reply Motion no brief has been received by the Defendants. Also, no brief is noted as being received by the Commission on the Commission's eCase system.
4. Claimant's attorney filed his Motion to Reinstate Appeal on June 10, 2019. In that Motion, Claimant refers to a Certificate of Service for the filing of his brief and notes that he has the envelope for a May 13, 2019 service date. Neither the Certificate of Service nor the envelope were produced as an exhibit to the motion.
5. The Defendants can do no more than state that they never received Claimant's Appellant brief to the Full Commission, which is required pursuant to the regulations.
6. The Defendants do not believe that any good cause has been shown as to why the Appeal, which was administratively dismissed when the Commission did not receive a copy of Claimant's brief, should be reinstated.

Based on the foregoing, the Defendants respectfully request that Claimant's Motion to Reinstate Appeal be dismissed.

Respectfully submitted,



O. SHAYNE WILLIAMS
MCANGUS GOUDELICK & COURIE, L.L.C.
Post Office Box 1349
Founders Centre, 2411 North Oak Street, Suite 401
Myrtle Beach, South Carolina 29577
(843) 848-6000
Attorneys for the Employer/Carrier

Myrtle Beach, South Carolina
June 19, 2019

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 1322347

COURTNEY RAY MITCHELL,

Employee,

Claimant,

vs.

UPS, INC.,

Employer,

AND

LIBERTY MUTUAL,

Carrier,

Defendants.

**CERTIFICATE
OF
SERVICE**

The undersigned certifies that she is an employee at MCANGUS GOUDELOCK & COURIE, and that she has served, on the date set forth below, a copy of the document described below, in the above entitled action to the following persons, pursuant to Section 15-9-930 and Section 15-9-940 of the Code of Laws of South Carolina, 1976, by depositing a copy of same in the United States Mail, postage prepaid, addressed to:

TO:

Donald L. Smith, Esquire
Attorney Office of Donald Smith
122 North Main Street
Anderson, South Carolina 29621

VIA U.S. MAIL

Judicial Director

S. C. WORKERS' COMPENSATION COMMISSION

Post Office Box 1715


Columbia, South Carolina 29202-1715

DOCUMENT:

Motion

DATE OF
MAILING:

June 19, 2019



Ashley DiPalma
Legal Assistant to O. Shayne Williams

**SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
JUDICIAL CONFERENCE DECISION AND ORDER**

**Courtney R. Mitchell v UPS
SCWCC: 1322347
Commissioner: Beck**

This matter was heard before the South Carolina Workers' Compensation Full Commission in Judicial Conference on a **Motion to Reinstate**. The Commissioners considered the matter and ordered the matter handled in the following manner:

IT IS, THEREFORE, ORDERED the pending appeal of the Administrative Order of the Commission is hereby;
 Dismissed as Interlocutory. Set for Oral Argument.

IT IS, THEREFORE, ORDERED the pending motion be, and hereby is;
 Granted. X Denied. Dismissed Preserved for hearing

BEFORE THE;
 Hearing Comm. Jurisdictional Comm. Full Commission.

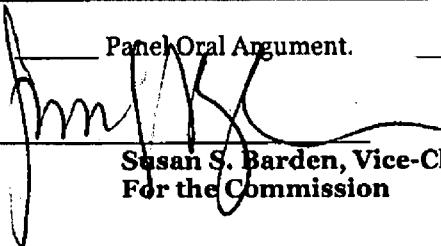
IT IS, THEREFORE, ORDERED this matter be, and hereby is; remanded to take such action and enter an Order consistent with the Court's directive.

 Remand to Panel as indicated below.
 Barden James Taylor
 Beck Campbell Wilkerson
 McCaskill

 Remand for Order consistent with the Order of the Court.
 Remand to the Hearing Commissioner.
 Remand to the Jurisdictional Commissioner.
 Other: _____

 Remand: Panel Oral Argument. En Banc Oral Argument.

AND IT IS SO ORDERED.



**Susan S. Barden, Vice-Chair
For the Commission**

Columbia, South Carolina

 7/15 2019

| CONCURRING: | NOT PARTICIPATING: | DISSENTING: |
|-------------------------------|---------------------------|--------------------|
| Commissioner T. Scott Beck | <u> X </u> | _____ |
| Commissioner Melody James | _____ | _____ |
| Commissioner Aisha Taylor | _____ | _____ |
| Commissioner Avery Wilkerson | _____ | _____ |
| Commissioner Michael Campbell | _____ | _____ |
| Commissioner Gene McCaskill | _____ | _____ |

CERTIFICATE OF SERVICE
**THIS IS TO CERTIFY THE UNDERSIGNED HAS THIS DATE SERVED THIS ORDER
IN THE ABOVE ENTITLED ACTION UPON ALL PARTIES ELECTRONICALLY OR BY
DEPOSITING A COPY HEREOF, POSTAGE PAID, IN THE UNITED STATES MAIL**

This 15 day of July , 2019.
By: Valerie D. Keller
SCWCC Judicial Department

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

AUG 26 2019

SC Court of Appeals

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

W.C.C. File No.: 1322347

Courtney Ray Mitchell, Employee, Appellant,

v.

United Parcel Service, Employer, and
Liberty Mutual, Carrier, Respondents.

PROOF OF SERVICE

I certify that on the 23rd day of August 2019, I served Respondents United Parcel Service and Liberty Mutual's, **Return in Opposition to Motion for Leave to File Amended Notice of Appeal and Amended Notice of Appeal** on Courtney Ray Mitchell by depositing a copy of it in the United States Mail, postage prepaid, addressed to his attorney of record as follows:

Donald L. Smith, Esq.
ATTORNEY OFFICE OF DONALD SMITH
122 N. Main Street
Anderson, South Carolina 29621
*Counsel for Appellant
Courtney Ray Mitchel*



Mackenzie Broughton
Legal Assistant to Helen F. Hiser
McAngus, Goudelock & Courie LLC
P.O. Box 650007
Mount Pleasant, South Carolina 29465
(843) 576-2900

*Attorneys for Respondents United Parcel Service
and Liberty Mutual*

Reply To

HELEN F. HISER
Direct Dial: (843) 576-2930
helen.hiser@mgclaw.com

August 23, 2019

Via U.S. Mail

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

RECEIVED
AUG 26 2019
SC Court of Appeals

RE: Courtney Ray Mitchell v. UPS and Liberty Mutual
Date of Accident: June 21, 2013
WCC File No.: 1322347
Our File No.: 2095.15004
Claim No.: WC555C6285
Appeal No.: 2019-001361

Dear Ms. Kitchings:

Enclosed please find the original and seven (7) copies of Respondents' Return in Opposition to Motion for Leave to File Amended Notice of Appeal and Amended Notice of Appeal, and the original and one copy of the Proof of Service in the above-referenced matter. Please file the originals and return a clocked-in copy in the enclosed self-addressed, stamped envelope.

If you have any questions, please do not hesitate to contact me.

Sincerely,
McAngus Goudelock & Courie, LLC



Helen F. Hiser

Enclosures

cc: Donald L. Smith, Esq.

RECEIVED
AUG 26 2019
SC Court of Appeals

P

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Charleston Runner
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735 J Dodds Blvd
Mount Pleasant SC 29464-3058

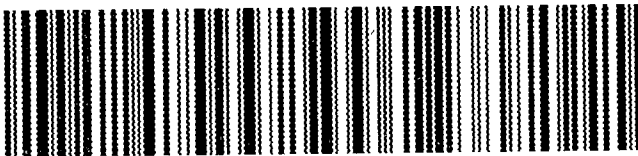
Estimated Delivery Date: 09/23/2019

0024

B012

THE HONORABLE JENNY ABBOTT KITCHINGS
SOUTH CAROLINA COURT OF APPEALS
PO BOX 11629
COLUMBIA SC 29211-1629

USPS TRACKING #



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