

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA WORKERS
COMPENSATION COMMISSION

T. Scott Beck, Commissioner

Appellate case No. 2019-001361

Courtney Ray Mitchell,

v.

United Parcel Service and
Liberty Corporation,

RECEIVED
SEP 05 2019
SC Court of Appeals
Appellant,

Respondents.

**APPELLANT'S REPLY TO RESPONDENTS' RETURN IN OPPOSITION
TO THE MOTION FOR LEAVE TO FILE AMENDED NOTICE OF APPEAL
AND AMENDED NOTICE OF APPEAL**

In their Return in Opposition to Plaintiff's Motion for Leave to File Amended Notice of Appeal and Amended Notice of Appeal, Respondent opposes the instant appeal, alleging that due to Appellant's failure to file an appellant's brief, the Full Commission's decision is not reviewable by this Court. Appellant believes otherwise.

Appellant filed a Form 30, Request for Commission Review with the Full Commission on February 27, 2019. The Commission issued a Form 31 Briefing Schedule and Notice of Appellate Hearing setting May 12, 2019 as the due date for the filing of Appellant's Brief. On May 13, 2019, Appellant filed his Appellant's Brief and served both the Commission and Respondents, by and through their counsel of record. This was evidenced by a Certificate of

Service, dated May 13, 2019.

On May 23, 2019, The SC Workers' Compensation Commission issued its Administrative Order dismissing the case. In its Order, it stated:

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.

Believing that the only issue was that Appellant filed his brief on May 13, 2019 instead of May 12, 2019, Appellant filed a Motion to Vacate the Order, dated May 23, 2019 and Reinstate the Case. In his motion, Appellant asserted that since May 12, 2019 was a Sunday, he is, by law, allowed to file his Appellant's brief on the following day. Rule 6 SCRCF 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.

On July 15, 2019, the Commission issued its challenged Order, denying Appellant's Motion to Vacate Order and Motion to Reinstate the case. Thus, Appellant filed the instant appeal, questioning the Commission's dismissal of his case due to computation of time.

In a nutshell, Respondents are opposing the institution of this appeal allegedly because they allegedly did not receive a copy of Appellant's brief as required by the Rule 67-705(A).


While Appellant refutes the proposition that Respondents did not receive a copy of Appellant's

brief to the Full Commission, Respondents did not raise the issue in the lower court. Thus, the issue of lack of preservation in the lower court prevents this Court from reviewing the same.

State v. Langford, 400 S.C. 421, 735 S.E.2d 471 (SC 2012).

CONCLUSION

For the reasons aforementioned Appellant prays that this Court deny Respondents' Return in Opposition to Appellant's Motion and Amended Notice of Appeal and allow herein Appellant to pursue his appeal.



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Anderson, SC
August 30, 2019.

**FORM 7
PROOF OF SERVICE**

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA WORKERS
COMPENSATION COMMISSION

T. Scott Beck, Commissioner

Appellate Case No. 2019-001361

Courtney Ray Mitchell,

Appellant,

v.

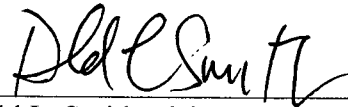
United Parcel Service and
Liberty Insurance Corporation,

Respondents.

PROOF OF SERVICE

I certify that I have served an original and six (6) copies of Reply to Respondents' Return to Appellant's Motion for Leave to File Amended Notice of Appeal, Amended Notice of Appeal and Proof of Service of same, upon The Honorable Jenny Abbott Kitchings, Clerk of South Carolina Court of Appeals, located at Post Office Box 11629, Columbia, SC 29211, and a copy of the same upon Respondents, by and through their counsels of record, Ms. Helen F. Hiser, Esquire and O. Shayne Williams, Esquire, at McAngus Goudelock & Courie, LLC, at P.O. Box 650007, Mount Pleasant, South Carolina 29465, by depositing copies of it in the United States Mail, postage prepaid, on August 30, 2019.

August 30, 2019



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Attorney for Appellant

FORM 8
LETTER TO THE APPELLATE COURT CLERK
FILING REPLY TO RESPONDENTS' RETURN TO APPELLANT'S MOTION
FOR LEAVE TO AMEND NOTICE OF APPEAL AND NOTICE OF APPEAL

August 30, 2019

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

**RE: Courtney Ray Mitchell v. United Parcel Service and
Liberty Insurance Corporation
Appellate Case No. 2019-001361**

RECEIVED
SEP 05 2019
SC Court of Appeals

Dear Ms. Kitchings:

Please find enclosed the following materials:

- 1) An original and six (6) copies of Appellant's Reply to Respondents' Return to Appellant's Motion for Leave to File Amended Notice of Appeal;
- 2) Proof of Service for same.

I am respectfully submitting these materials to the Honorable Court for consideration.

Sincerely,



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cc: Ms. Helen F. Hiser, Esquire
Mr. O. Shayne Williams, Esquire