

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Appellate Case No. 2019-001254
WCC File No. 1506114

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SC Court of Appeals

Frankie Padgett, Claimant..... Respondent/Appellant,

v.

Cast & Crew Entertainment Services, Inc., Employer and
American Zurich Insurance Company, Carrier.....Appellants/Respondents,

INITIAL BRIEF OF APPELLANTS/RESPONDENTS

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STATEMENT OF ISSUES ON APPEAL

- I. Did the South Carolina Workers’ Compensation Commission err in vacating the Hearing Commissioner’s findings that the settlement agreement and release (clincher) reflected that 1,704.56 weeks of benefits had been paid pursuant to a prior work-related accident and as such, Claimant was not entitled to additional indemnity benefits because Claimant’s payments for the prior accident and the 2015 accident had exceeded or reached the 500 week limitation as is set forth in §§ 42-1-170 and 42-9-10 & 30 of the South Carolina Code of Laws Annotated (2018)?

- II. Did the South Carolina Workers’ Compensation Commission err in vacating the Hearing Commissioner’s decision by applying an incorrect legal analysis of § 42-9-170, and erroneously concluded that the statute permits additional monetary payments in cases of successive permanent injuries after a previous permanent injury, the error being that Respondent was illegally in the same employ at the time of the subsequent accident, which occurred on May 6, 2015, and he had been paid in excess of 500 weeks of compensation?

- III. Did the South Carolina Workers' Compensation Commission err in finding and legally concluding that Respondent is entitled to payment of temporary total disability compensation benefits, despite having been paid in excess of 500 weeks of worker's compensation benefits?
- IV. Did the South Carolina Workers' Compensation Commission err in vacating the Hearing Commissioner's order and prospectively finding Respondent is entitled to continued receipt of temporary total compensation benefits and that a determination of permanent partial, permanent total and/or wage loss benefits can be adjudicated at a later date once Respondent reaches maximum medical improvement? The error being that Respondent was employed in violation of the previous judgment, decree and order of the Commission and he has been paid in excess of 500 weeks of benefits.
- V. Did the South Carolina Workers' Compensation Commission err in factually finding and legally concluding that Respondent shall be paid temporary total disability compensation benefits until further Order of the Commission, the error being that the conclusion and finding is contrary to the terms set forth in the settlement agreement which prohibited Respondent from seeking employment with Cast and Crew subsequent to October 12, 2012, and the South Carolina Worker's Compensation Commission lacks subject-matter jurisdiction and cannot award Respondent any benefits arising from the May 6, 2015 accident because there was not a lawful employment relationship?
- VI. Did the South Carolina Workers' Compensation Commission err in vacating the Hearing Commissioner's findings and decision regarding the payment of temporary total disability compensation benefits and ordering such to be paid in the absence of an injunction, fraud committed by Appellants, or lack of subject-matter jurisdiction?
- VII. Did the South Carolina Workers' Compensation err vacating the Hearing Commissioner's decision on the payment of temporary total disability compensation benefits rather than reversing the decision because the decision absent a re-hearing constitutes a violation of Appellants' right to due process?
- VIII. Did the South Carolina Workers' Compensation Commission err in vacating the Hearing Commissioner's decision denying Respondent temporary total disability compensation benefits, when the reliable, probative, and substantial evidence reflects Respondent has been paid in excess of 500 weeks of benefits and Respondent was not a lawful and legal employee of Cast and Crew at the time of his accident on May 6, 2015?

STATEMENT OF THE CASE

Frank Perry Padgett, Jr. a/k/a Frankie Padgett, Perry F. Padgett, Jr., and Perry Padgett [hereinafter “Padgett” or “Respondent”] is a 53-year old male, who stands 6’3” tall and weighed 352 pounds around the time of the accident. Padgett was assigned to work as a truck driver for Cast & Crew Entertainment Services, Inc., the employer, on March 30, 2015. Padgett is a member and shop steward of the Teamsters Union. Specifically, Cast & Crew Entertainment Services, Appellant, is assigned truck drivers through the Teamsters Union. The drivers provide transportation services for film production in South Carolina.

On May 6, 2015, Frankie Padgett, Respondent, was entering a trailer in order to make a copy when his right ankle popped. Padgett suffered a tear of his right Achilles tendon and ankle fracture. Padgett reported the right ankle injury on the same date to Brian Turner, a supervisor and medic.

Padgett was initially treated at Nason Medical Urgent Care Center. Padgett complained of pain radiating from the right ankle into the right calf. Padgett also complained of numbness and tingling of the right ankle. Padgett underwent a physical examination and x-rays of the right ankle were ordered.

The medical providers at Nason Medical Center Urgent Care diagnosed Padgett with a right foot and ankle fracture and a rupture of the Achilles tendon. Accordingly, Padgett was released on the same date and advised not to work from May 6, 2015 to May 8, 2015.

Subsequently, Padgett treated with Dr. John Prather because of continued right foot and ankle pain. Dr. Prather ordered a MRI. The MRI revealed an Achilles tendon rupture, plantar fasciitis and plantar calcaneal spur. Dr. Prather initially prescribed a CAM boot and the medications Percocet and Flexeril for pain and spasms.

Because conservative medical modalities did not improve Padgett's symptoms of pain, Dr. Prather performed a right Achilles reconstruction surgery on May 19, 2015, at Memorial Health University Medical Center.

Several weeks after undergoing right Achilles reconstruction surgery, Padgett suffered a second Achilles rupture when he was lifting himself from the toilet and felt a pop in his right heel.

Padgett underwent a second MRI which revealed a re-rupture of the right Achilles tendon. Dr. Prather performed a debridement of the Achilles and a second reconstruction surgery. Padgett was placed in a short leg splint after surgery. Dr. Prather later prescribed a short leg cast with plantar flexion. Dr. Prather also ordered Padgett to undergo physical therapy.

During the course of Padgett's physical therapy, he continued to complain of right ankle and foot pain. Dr. Prather administered injections to address Padgett's post-surgery pain complaints. Dr. Prather also prescribed a number of pain and anti-inflammatory medications, i.e., Percocet, Lyrica, Mobic, Flexeril, Elavil, Soma, and Amitriptyline.

On January 19, 2016, Padgett underwent an independent medical evaluation with Dr. Richard Gross, an orthopaedic surgeon. Dr. Gross recommended Padgett undergo an EMG in order to evaluate the etiology or cause of the neuropathy affecting the right foot. Dr. Gross also recommended the possible transfer of FHL tendon from the big toe to the calcaneus bone in order to improve the flexion of the right foot.

Padgett attended physical therapy sessions at Low Country Rehabilitation from September 1, 2015 to September 28, 2016. Because physical therapy did little to alleviate Padgett's complaints of pain, he was referred to Dr. Gerald Chai for another medical opinion. Dr. Chai first evaluated Padgett on March 30, 2016, for complaints of chronic pain. Dr. Chai

recommended Padgett continue with long-term narcotic medication in order to treat complaints of chronic pain.

While Padgett was receiving medical treatment resulting from the May 6, 2015 accident, the insurance claims adjuster for American Zurich Insurance Company, Appellant, discovered Padgett had been involved in a prior work-related accident as an employee of Cast & Crew on August 27, 2009. Padgett had initially worked for Cast & Crew on January 26, 2009, as a truck driver. (Exhibit B-1). Padgett's job duties required him to transport film equipment and set materials to various locations.

By way of background, on August 27, 2009, Padgett fell and injured his left ankle and right knee while walking up the steps to a warehouse. Padgett underwent multiple surgeries to the left ankle. Padgett subsequently began complaining of increased right knee pain and low back pain. Because Padgett suffered with diabetes, hypertension and obesity, he claimed that he was permanently and totally disabled as a result of the 2009 accident. Claimant filed a Form 50 seeking a permanent and total disability award.

Padgett was paid \$106,000.00 or 154.8571 weeks of temporary total disability compensation benefits from 2009 to 2012. Padgett's 2009 claim was ultimately settled for a lump sum payment of \$150,000.00, by virtue of a settlement agreement and release (clincher).

Upon review of the 2009 accident, the claims adjuster discovered that Padgett had utilized the name of Perry Padgett, with regard to the 2009 claim and a variation of his name- Frankie Padgett- for the 2015 claim. At the time of Padgett's assignment to work with Cast & Crew Entertainment Services on March 30, 2015, he utilized the name of Frankie Padgett. Padgett utilized two different names to obtain employment and to receive workers' compensation benefits.

Upon this discovery around May 17, 2017, it was concluded Padgett would be paid in excess of 500 weeks of benefits, and that no additional indemnity benefits should be paid pursuant to sections 42-9-160 and 170 of the South Carolina Code of Laws. *S.C. Code Ann. §§42-1-160 &170 (2018)*.

Accordingly, a hearing to address the issues raised in Appellants' Petition was scheduled on October 30, 2017, in Moncks Corner, South Carolina, by the Honorable Aisha Taylor, Hearing Commissioner. On June 15, 2018, Commissioner Taylor promulgated an Order permitting Respondents to terminate payment of temporary total disability compensation benefits to Padgett because monetary compensation in excess of 500 weeks had been paid.

Padgett appealed Commissioner Taylor's Order to the Full Commission Appellate Panel. In an order dated June 26, 2019, the Appellate Panel affirmed in part and vacated in part the Hearing Commissioner's order. From this decision, Appellants appealed to this Honorable Court.

STATEMENT OF THE FACTS

Frankie Padgett, Jr., a/k/a Perry F. Padgett, Jr. and Perry Padgett, worked in the employment of Cast & Crew. During Padgett's first period of employment with Cast & Crew, he sustained injuries to his left foot, left leg, back, hips and right leg on August 27, 2009.

Padgett received temporary total disability compensation benefits from August 28, 2009, to September 26, 2012. As a result, Padgett was paid a total of 154.8571 weeks of temporary compensation benefits. Cast & Crew also paid \$91,851.55 in total medical benefits.

Padgett resolved the 2009 claim for the lump sum and non-commuted payment of \$150,000.00, by virtue of a settlement agreement and release (clincher). According to the terms of the clincher, the \$150,000.00 payment, less attorneys' fees and costs, were to be paid over a period of 1,704.56 weeks for "*disputed permanent disability*".

The clincher provided that the settlement agreement and release was not only an agreement approved by the South Carolina Workers' Compensation Commission, but was also an agreement which would be construed as an Act, Judgment, Decree and contract, with the provisions of the same enforceable in a court of competent jurisdiction. Accordingly, Padgett and Cast & Crew agreed effective October 22, 2012, that Padgett was no longer an employee of Cast & Crew and that he would not seek future employment with Cast & Crew upon his receipt of \$150,000.00 for permanent disability. (Exhibit B 8-14).

Subsequently, in 2015, Padgett sought employment as a driver for a production company referred to as "*Danger Boy Production*". Padgett was required to complete various employment documents at the time of his hire, which reflected that the employer was Cast & Crew (Exhibit F p. 1). Padgett submitted his employment hire forms to Cast & Crew, but he did not use the name he had utilized in 2009 or "Perry Padgett" when he was first employed by Cast & Crew. Rather,

Respondent used the name “Frankie Padgett” when completing the employment documents. (Exhibit F-1-3).

Despite the clause in the Settlement Agreement and Release, which was filed with the Commission in on October 22, 2012, and precluded Padgett from seeking or obtaining employment with Cast & Crew, Padgett began working for Cast & Crew on March 30, 2015, by utilizing the name Frankie Padgett, as opposed to Perry Padgett (Exhibits B, D and F: Pages 1 – 4).

After Padgett injured his right leg and foot on May 6, 2015, he received correspondence from American Zurich Insurance Company’s adjuster and documents filed with the South Carolina Workers’ Compensation Commission designating Cast & Crew as Padgett’s employer. Despite numerous documents prior to and subsequent to his injury, Padgett denied the existence of an employment relationship with Cast & Crew. (Exhibit A).

Padgett denies working for Cast & Crew after 2012. Padgett admitted that the settlement involving his 2009 accidental injury was paid by Cast & Crew; and that Cast & Crew was designated as the employer in the settlement documents. Padgett also admitted when his workers’ compensation claim was being processed in 2015, he received correspondence from the insurance adjuster designating Cast & Crew as his employer. (TR. P. 28, LL. 24 – 25; P. 29).

Padgett admits that prior to his injury and upon receipt of his first paycheck, Cast & Crew was designated as the employer. (TR. P. 53, L. 1; P. 54, LL. 1 – 4). Despite this, Padgett willfully, deliberately, purposefully and knowingly continued his employment with Cast & Crew, while cognizant of the terms of the clincher prohibiting future employment with Cast & Crew.

Padgett argues that despite completion of an application in which Cast & Crew is clearly designated as the employer, he did not violate the terms of the clincher because Cast & Crew is a payroll company, Professional Employer Organization or staffing company, rather than the employer. (Exhibit F-1). Padgett further argues that Cast & Crew merely provides payroll services and workers' compensation insurance for various production companies; and did not direct his employment activities. Ironically, Padgett never disputed Cast & Crew was his employer in the 2009 claim. In fact, Padgett filed a Form 50 asserting that Cast & Crew was his direct employer in 2009 and demanded payment for permanent and total disability benefits.

On the contrary, Cast & Crew argues because Padgett's employment application and check stubs and other documents in 2015, designate Cast & Crew as the employer, Padgett knowingly and willfully misrepresented himself and in turn, breached the contract terms and judicial decree not to seek re-employment. As a result, Padgett committed actual fraud in order to obtain employment with Cast & Crew. Appellants assert that because of Padgett's fraudulent actions and misrepresentation, it has suffered damages by paying unwarranted medical and compensation benefits.

In addition, Cast & Crew argues that no additional temporary or permanent disability benefits are lawfully owed because more than 500 weeks of benefits had been paid at the time of the hearing and certainly at the time of the issuance of the order on June 15, 2018.

STANDARD OF REVIEW

Judicial review of a Workers' Compensation Commission decision is governed by South Carolina Code Annotated §1-23-380 of the Administrative Procedures Act (hereinafter "the APA"); *Lark v. Bi-Lo*, 276 S.C. 130, 276 S.E.2d 304 (1981). Under the APA, a decision of the South Carolina Workers' Compensation Commission should be reversed, modified or remanded if unsupported by substantial evidence, or if substantial rights of the appellant have been affected by an error of law, or if the decision is arbitrary or capricious or characterized by an abuse or unwarranted exercise of discretion. S.C. Code Ann. §1-23-380(A)(5) (Supp. 2014).

Review of the Commission's factual findings is governed by the substantial evidence standard. "A reviewing court may reverse or modify a decision of an agency if the findings, inferences, conclusions, or decisions of that agency are 'clearly erroneous in view of the reliable, probative and substantial evidence on the whole record.'" *Bass v. Isochem*, 365 S.C. 454, 467, 617 S.E.2d 369, 376 (Ct. App. 2005), quoting from *Bursey v. South Carolina Dep't of Health & Envtl. Control*, 360 S.C. 135, 600 S.E.2d 80 (Ct. App. 2004); see also *Tiller v. Nat'l Health Care Ctr.*, 334 S.C. 333, 513 S.E.2d 843 (1999); see also S.C. Code Ann. §1-23-380(A)(5)(e). "Substantial evidence is not a mere scintilla of evidence, nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion the administrative agency reached in order to justify its action." *Frame v. Resort Services Inc.*, 357 S.C. 520, 527-28, 593 S.E.2d 491, 495 (Ct. App. 2004); *Bass v. Isochem*, 365 S.C. at 468, 617 S.E.2d at 376. In particular, workers' compensation awards "must not be based on surmise, conjecture or speculation." *Tiller*, 334 S.C. at 339, 513 S.E.2d at 845.

In addition, a reviewing court should reverse, remand or modify a decision of the Workers' Compensation Commission if it is affected by an error of law. Etheredge v. Monsanto Co., 349 S.C. 451, 562 S.E.2d 679 (Ct. App. 2002). Case law unequivocally establishes that statutory interpretation is a question of law, and the appellate court "is free to decide matters of law with no particular deference to the fact finder." King v. Int'l Knife & Saw - Florence, 395 S.C. 437, 442, 718 S.E.2d 227, 229 (Ct. App. 2011); S.C. Uninsured Employers' Fund v. House, 360 S.C. 468, 602 S.E.2d 81 (Ct. App. 2004). Likewise, the determination of legislative intent in a statute is a matter of law. Wehle v. S.C. Retirement Syst., 363 S.E. 394, 611 S.E.2d 240 (2005); Liberty Mutual Insur. Co. v. S.C. Second Injury Fund, 363 S.C. 612, 611 S.E.2d 297 (2005).

In summary, an appellate court must review the Commission's interpretation of a statute as a question of law and must review the Commission's application of the facts to the statute as a question of fact under the substantial evidence standard of review. See King, 395 S.C. at 442, 718 S.E.2d at 229.

ARGUMENTS

I. THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION LACKS SUBJECT MATTER JURISDICTION BECAUSE THERE IS NOT AN EMPLOYER/EMPLOYEE RELATIONSHIP, AND THUS, THE COMMISSION CANNOT AWARD RESPONDENT ADDITIONAL BENEFITS ARISING FROM THE ACCIDENT THAT OCCURRED ON MAY 6, 2015.

In order for the for the South Carolina Workers' Compensation Commission to exercise jurisdiction, it must be established that an employee/employer relationship exist. *S.C. Code Ann. §§ 42-1-130 and 140 (2018)*. The existence of an employer/employee relationship is jurisdictional and the reviewing court is not bound by the Commission's findings of fact upon which jurisdiction is dependent. *Harding v. Plumley, 329 S.C. 580, 496 S.E.2d 29 (1998)*.

In particular, the employment contract entered into by Respondent with Cast and Crew in 2015 prevented him from lawfully being employed by Cast & Crew. Thus, absent and employment relationship, the Commission is unable to exercise subject matter jurisdiction and award additional benefits in the instant case. *S.C. Code Ann. §§ 42-1-10; 42-1-130-150 (2018)*. Because Respondent knowingly and willfully misrepresented himself and breached the provision of the judicial decree, order and contract not to seek employment or reemployment with Cast & Crew, the contract of hire or employment is deemed voidable. *Metropolitan Life Ins. Co. v. Stuckey, 194 S.C. 469, 10 S.E. 3 (1940) (actual fraud renders all contracts voidable); Regions Bank v Schmauch, 354 S.C. 648, 672, 582 S.E.2d 432, 444 (Ct. App. 2003) and Small v. Oneita Indus., 318 S. C. 553, 459 S.E.2d 306 (1995). See also,*

Cooper v. McDevitt-Street & Co., 260 S.C. 463, 196 S.E.2d 833 (1973)(false representation inducing employment makes the employment contract voidable at the employer's option). See e.g., S.C. Code Ann. §38-55-540(A)(2018).

In the instant case, Padgett with the assistance of counsel, signed a Settlement Agreement and Release or clincher on October 12, 2012. In provision III (G), the scope and construction of the Settlement Agreement and Release was agreed by the parties to be construed as an act, judgement and decree of South Carolina. Moreover, the parties agreed that the Settlement Agreement and Release shall be construed as a contract between the parties. Provision III (I), further states that the “parties agree that the [Respondent] is no longer an employee of Cast & Crew Entertainment Services, Inc. and further agrees that he will not seek employment with Cast & Crew Entertainment Services, Inc.”.

Padgett unilaterally requested that the settlement allocation language reflect receipt of only permanent disability payments as reflected in the Settlement Agreement and Release. Subsequently, the Settlement Agreement was filed with the Commission and approved on October 22, 2012. *S.C. Comm. Reg. 67-803(B)(2)(a-c)(C)*. Thereafter, the payment of \$150,000.00 in settlement proceeds for permanent disability benefits were dispersed to Padgett and his attorney.

There is no dispute that the elements necessary for the aforesaid contract to enforceable were established to form a contract with regard to the following required factors: (1) Competent parties; (2) A subject matter; (3) Consideration; (4) Mutuality of agreement; and (5) Mutuality of obligation. *Player V. Chandler, 299 S.C. 101, 382 S.E.2 891 (1989)*.

The provision prohibiting Respondent from seeking reemployment at Cast & Crew was predicated upon the allegations contained in the Form 50 with respect to the August 27, 2009

work accident. In that Form 50, Padgett contended that he was permanently and totally disabled and entitled to lifetime medical treatment. Thus, Padgett's contention that he was permanently and totally disabled is further confirmed in provision II of the Settlement Agreement and Release reflecting an allocation of Respondents award over the remainder of his life expectancy or 1,704.56 weeks or 32.78 years. Again, it is important to note that the Settlement Agreement and Release reflects Claimant demand that the \$150,000.00 in settlement proceeds were allocated over his life expectancy reflecting permanent disability. Pursuant to the Supreme Court's holding in the case of *James v. Anne's, Inc.*, 390 S.C. 188, 201, 701 S.E.2d 730, 736 (2010), Padgett had total authority and control over the proration of lump sum award. By contrast, Cast & Crew had absolutely no say in the allocation of the settlement proceeds.

Accordingly, there is no dispute Padgett was paid 1,705.56 weeks of prorated benefits over his life or 220.14793 weeks over the 500 week monetary limitation (\$150,000.00 divided by a compensation rate of \$681.36). *James v. Anne's*, 390 S.C. at 198, 701 S.E.2d at 735.

Two and a half years after settlement of the 2009 claim, Padgett reapplied to Cast & Crew on March 30, 2015 by virtue of his membership with the Teamsters Union. Padgett testified that he has always referred to himself as **Frankie Padgett**. (TR. P. 30 LL. 20 – 25; P. 31 LL. 1 – 2) However, a review of the clincher, which was signed by Padgett on October 12, 2012, reflects that the name **Perry F. Padgett, Jr.**, was utilized. (Exhibit D p. 13 – 14).

Padgett admitted that prior to his injury and upon receipt of his first paycheck, Cast & Crew was designated as the employer. (TR. P. 53, L. 1; P. 54, LL. 1 – 4). As a matter of fact, the withholding form completed by Padgett stated Cast & Crew was his employer. Padgett's use of a variation of his legal name on the withholding form and other documents clearly show an intent to avoid discovery of his true identity by a calculated misrepresentation of his name. Hence, the

only finding and legal conclusion is that Padgett willfully, deliberately, purposefully and knowingly continued his employment with Cast & Crew while cognizant of the terms of the clincher, which had expressly prohibited any future employment with Cast & Crew.

The order of the Commission's Appellate Panel findings of fact numbers 1-5, is a complete and concrete confirmation of Padgett's fraudulent and conscious intent in obtaining re-employment in direct violation of the 2012 Settlement Agreement and Release. There is no evidence to the contrary which warrant any other findings that could be remotely favorable to Padgett.

The Commission found Padgett's actions undoubtedly violated the terms of the Settlement Agreement, contract, judgment, act and judicial decree as is reflected in the Settlement Agreement filed with the Commission on October 22, 2012. Padgett's actions are tantamount to a breach of contract accompanied by fraudulent act because of his obvious intent to deceive Appellants into re-hiring him. *See Kelly v. Nationwide Mut. Ins. Co.*, 278 S.C. 488, 298 S.E.2d 454 (1982). Under the attendant circumstances, if it is determined a contract of employment existed, such is voidable because of Padgett's fraudulent actions. *Small v. Oneita Indus.*, 318 S. C. 553, 459 S.E.2d 306 (1995).

Respondent's breach reflects that there is no employee/employer relationship and as a result, the Commission lacks subject matter jurisdiction to order payment of benefits. Moreover, Appellants have suffered damages by virtue of paying for medical benefits it did not owe and payment of monetary benefits in excess of 500 weeks of compensation.

Accordingly, Appellant's respectfully request this Court reverse the Commission's decision and order.

**II. THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
LACKS JURISDICTION TO ORDER PAYMENT OF ADDITIONAL
INDEMNITY BENEFITS OR TEMPORARY TOTAL DISABILITY
COMPENSATION WHEN RESPONDENT HAS BEEN PAID AN EXCESS OF
500 WEEKS OF INDEMNITY BENEFITS.**

Appellants argue the Commission lacks jurisdiction to order payment of additional indemnity benefits upon a plain reading of § 42-9-170. Specifically, § 42-9-170 (A) provides the following:

If an employee receives a permanent injury, as specific in Section 42-9-30 or Section 42-9-10 (B), after having sustained another permanent injury in the same employment, he is entitled to compensation for both injuries, but the total compensation must be paid by extending the period and not increasing the amount of weekly compensation, and in no case exceeding 500 weeks.

S.C. Code Ann. § 42-9-170(A) (2018).

A review of the Settlement Agreement filed on October 22, 2012, with the Commission reflects payment of 1704.56 weeks of compensation benefits for “disputed permanent disability”. Clearly, the total monetary weeks of compensation paid to Padgett from the 2009 and 2015 claims grossly exceeds the 500 week limitation as set forth in section 42-9-170(A) and most recently reaffirmed in the case of *James v. Anne’s, Inc.*, 390 S.C. 188, 198, 701 S.E.2d 730, 735 (2010).

Our Supreme Court reaffirmed that the 500 week limitation of benefits provided in *S.C. Ann. § 42-9-10(A) (Supp. 2009)* by emphatically concluding the 500 week limitation applies to the maximum monetary amount one can recover under the South Carolina Workers’ Act. *Id. See also, James v. Anne’s, Inc.*, 390 S.C. 188, 199, 701 S.E.2d 730, 736.

Assuming *arguendo* the prorated amount over Padgett's life expectancy cannot be utilized to calculate whether 500 weeks of compensation has been paid, without dispute, the \$150,000.00 was paid as permanent disability compensation benefits per the terms of the 2012 Settlement Agreement and Release. At the time of the settlement, Padgett's compensation rate was \$681.36. Accordingly, the payment of \$150,000.00 in the 2012 settlement reflects a payment of 220.14793 weeks of monetary compensation benefits.

A review of the Form 19 attached to the Settlement Agreement and Release also reflects payment of an additional 154.857 weeks of temporary total compensation or monetary benefits because of Padgett's total incapacity from 2009 to 2012.

Padgett's unlawful breach with regards to reapplying for employment at Cast & Crew in 2015 was not immediately discovered, resulted in Padgett being paid temporary total disability compensation (monetary) benefits from May 7, 2015 to on or about May 31, 2018. This equates to an additional payment of compensation benefits totaling an additional 160.1429 weeks of benefits.

In sum, between the two injury claims, Padgett has been paid a total of 535.14793 weeks of compensation benefits. [220.14793 + 154.857 + 160.1429 weeks = 535.14783 weeks on monetary benefits].

The 500 week maximum limitation clearly precludes the South Carolina Workers' Compensation Commission from ordering the payment of additional benefits. *James v. Anne's, Inc., supra*. As a result, the Commission's order must be reversed as a matter of law; because it lacks the jurisdiction and authority to order additional monetary benefits based upon Padgett's receipt of 535.14793 weeks of indemnity/compensation benefits. *Id.*

It is anticipated Padgett will argue that the Commission acted within its authority to order payment of additional compensation benefits pursuant to the Supreme Courts holding in the case of *Medlin v. Greenville County*, 303 S.C. 44, 401 S.E.2d 667 (1991).

First, *Medlin* is distinguishable from the instant case. In dicta, the Supreme Court stated that because the employer conceded at oral argument that the employee could possibly be entitled to temporary total disability compensation benefits until maximum medical improvement is reached, the Court did not address the 500 week monetary limitation. Appellants are not conceding Padgett is entitled to continued payment of temporary total disability compensation benefits simply because 535 weeks of monetary benefits have been paid.

Second, our Court held that the adjudication of an employee being declared permanently and totally disabled was a sufficient legal and factual basis by which to find and legally conclude that no further payment of workers' compensation benefits were warranted. *Medlin* 303 S.C. 484, 488, 401 S.E.2d 667, 668 (1991). Further, *Medlin* was decided while the Second Injury Fund was in operation and before the Court's decision in *James v. Anne's, Inc.*, *supra*.

Third, section 42-9-170 clearly and emphatically states that the maximum payment of compensation in no case exceeds 500 weeks. *S.C. Code Ann. § 42-9-170 (2018)*. Interestingly, this section does not distinguish between payments of temporary and permanent disability compensation benefits. Again, the statute plainly states that **“the total compensation must be paid ... and in no case exceeding 500 weeks.”** *Id.* (“*Emphasis added*”).

Having paid Padgett approximately 535 weeks of compensation benefits, Appellants' cannot be ordered to pay additional compensation in excess of 500 weeks for injuries occurring

in the same employment without the Commission exceeding its statutory authority. *S.C. Code Ann. § 42-9-170(2018)*.

III. THE COMMISSION LEGALLY ERRED AND ABUSED ITS DISCRETION IN FINDING PADGETT IS ENTITLED TO TEMPORARY TOTAL DISABILITY COMPENSATION BENEFITS AND PROSPECTIVELY DETERMINING THAT A PERMANENT PARTIAL, PERMANENT TOTAL AND/OR WAGE LOSS AWARD CAN BE DETERMINED AT A LATER DATE ONCE MAXIMUM MEDICAL IMPROVEMENT HAS BEEN ACHIEVED.

As discussed above, Padgett has been paid 535 weeks of monetary benefits. As such, Padgett is not entitled to a wage loss or permanent disability award. *S.C. Code § 42-9-170*.

Because the cases of *Medlin, supra.*, and *Hopper v. Firestone stores, et al.*, 222 S.C. 143, 72 S.E.2d 71, 1952) were either decided prior to or during the operation of the South Carolina Second Injury Fund, the language in § 42-9-170 is dispositive with regard to the 500 week maximum monetary limitation on benefits. This fact is confirmed in a review of section 42-9-10 in which states that there is a 500 week limitation on compensation benefits. The only instances in which the 500 week limitation can be exceeded is when an employer is subject to Second Injury Fund recovery or the Claimant sustains injuries resulting in paraplegia, quadriplegia or permanent physical brain damage. *S.C. Code Ann. §42-9-10 (2018)*. See also, *S. C. Code Ann. §42-9-410(d)(2018)*.

Padgett's 2015 accident occurred after the abolishment of the South Carolina Second Injury Fund on July 1, 2007. Because Padgett has not suffered an injury resulting in paraplegia,

quadriplegia or permanent physical brain damage, he is subject to the 500 week limitation as is set forth throughout the Act.

Accordingly, it is respectfully submitted that the South Carolina Workers' Compensation Commission decision must be reversed as a matter of law. Also, substantial evidence reflects Padgett committed fraud, which renders any employment contract between Padgett and Cast & Crew voidable.

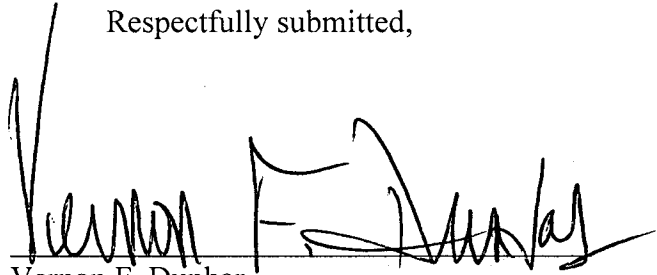
CONCLUSION

Based upon the forgoing arguments, it is respectfully submitted that the South Carolina Workers' Compensation Commission abused its discretion by ignoring the substantial evidence as contained in the findings of fact of the Hearing Commissioner and committed an error of law in ordering the payment of temporary total disability compensation benefits and further medical treatment.

Padgett has been paid in excess of 535 weeks of compensation benefits, despite the 500 week monetary cap or limitation on the payment of compensation benefits. Appellants are not seeking reimbursement for any payment in excess of 500 weeks of benefits. Appellants respectfully and legally requested to be relieved of its now extinguished and erroneously perceived obligation to provide monetary benefits to Padgett after he has been paid 535 weeks of compensation benefits.

Despite the overwhelming evidence of fraud committed by Padgett in altering his identity in his employment application, Appellants did not initially seek to terminate Respondent's receipt of medical benefits. However, in reviewing the Appellate Panel's order finding Padgett acted with an intent to deceive, coupled with the Commission's lack of jurisdiction, Appellants also seek the termination of a perceived obligation to provide Respondent with medical treatment.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Vernon F. Dunbar", written over a horizontal line.

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October 16, 2019

Attorney for Appellants

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission

Appellate Case No. 2019-001254
WCC File No. 1506114

RECEIVED
OCT 18 2019
SC Court of Appeals

Frankie Padgett..... Respondent,

v.

Cast & Crew Entertainment Services, Inc.,..... Employer,

and

American Zurich Insurance Company c/o
Zurich North America,Appellants,

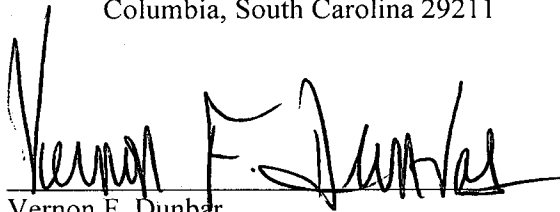
Certificate of Counsel

The undersigned hereby certifies that this initial brief complies with Rule 211, SCACR.

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The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
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October 16, 2019

The Honorable Jenny Abbott Kitchings
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RECEIVED
OCT 18 2019
SC Court of Appeals

RE: Frankie Padgett v. Cast & Crew Entertainment Services, Inc. and American Zurich Insurance Company c/o Zurich North America
Date of Accident: May 6, 2015
WCC File No.: 1506114
Our File No.: 20216.17069
Claim No.: 2840202414

Dear Ms. Kitchings:

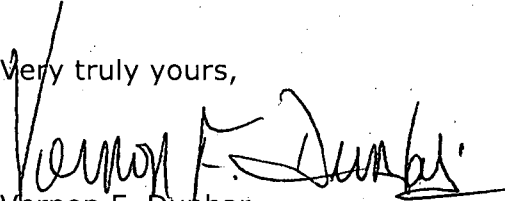
Please find enclosed an original and one copy of Appellants' Initial Brief and Designation of Matter to be Included in the Record on Appeal in the above referenced matter.

Please return a filed and stamped copy of these documents to me in the self-addressed and stamped envelope, which I have enclosed for your use.

By copy of this letter to Stephen B. Samuel, Attorney for Frankie Padgett, Respondent/Appellant, I am apprising him of my communication with you and I am also serving a copy of the same upon him.

With kind and warm regards, I remain

Very truly yours,


Vernon F. Dunbar

VFD/_amc

Enclosure: Initial Brief of Appellants', Designation of Matter to be Included in the Record on Appeal, Certificate of Service, Certificate of Counsel, Self-Addressed and Stamped Envelope

cc: Stephen B. Samuels, Esquire, Samuels Law Firm
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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SOUTH CAROLINA
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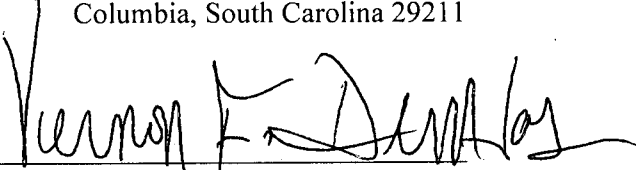
American Zurich Insurance Company c/o
Zurich North America,Appellants,

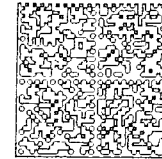
PROOF OF SERVICE

I hereby certify that I have this 16th day of October 2019, caused to be served a copy of Appellants' Initial Brief and Designation of Matter to be Included in the Record on Appeal by mailing a copy of same, postage prepaid, in the United States mail, with sufficient postage affixed as follows:

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October 16, 2019



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