

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

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SC Court of Appeals

Courtney Ray Mitchell,

Appellant,

v.

United Parcel Service and
Liberty Corporation,

Respondents.

APPELLANT'S RETURN TO RESPONDENTS' MOTION TO STRIKE

On October 21, 2019, Appellant served his Initial Brief and Designation of Matter to be Included in the Record on Appeal, hereinafter referred as "Form 14". Respondents moved to strike item #7 in Appellant's Form 14, citing Rule 210 (c) SCACR which provides that "the Record on Appeal shall not, however, include matter which was not presented to the lower court or tribunal." Respondents contend that item #7, which is Appellant's Brief, should not be included because "the Commission dismissed the Appellant's appeal to the Full Commission precisely because Appellant failed to file appellant's brief with that tribunal." (Respondent's Motion to Strike Item from Designation Matter, p. 1). Contrary to Respondent's assertions, Appellant maintains that his appeal was dismissed because the Commission deemed the Appellant's Brief as filed beyond the deadline for filing.

Form 31 specifically stated that Appellant's Brief was due on May 12, 2019, which is a Sunday. Rule 6 of the South Carolina Rules on Civil Procedure 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.”

Pursuant to the above-mentioned rule, Appellant has until the following working day, to file his Appellant's Brief to the Commission. Appellant filed his Brief on May 13, 2019, a Monday. He served Respondents via postal service. Since service is complete upon mailing pursuant to Rule 5(b) of the SCRCPP, Appellant avers that his Brief to the Commission was timely filed.

On May 23, 2019, the challenged Administrative Order was issued, which expressly 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.

Administrative Order, May 23, 2019.¹

¹ Rule 67-705 H(3) states that:

67-705. Briefs, Filing and Service

H. With the consent of the opposing party, the time for filing a brief may be extended if a letter acknowledging the agreement is filed with the Commission on or before the original filing date.

(3) 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.

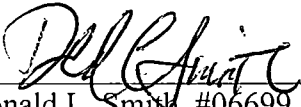
Upon receipt of the aforesaid Order, Appellant believed that the Commission received Appellant's Brief, albeit, belatedly. Appellant addressed the issue of timeliness in his Motion to Vacate the Order of Dismissal and Reinstate the Appeal. (Exhibit 1). The crux of Appellant's argument was Rule 6 of the SCRCP, which allows adjusting the filing of any pleading or motion on the next business day if the deadline for filing the same falls on a Saturday, Sunday or a holiday.

At no instance did the Commission reveal that it did not receive Appellant's Brief, therefore Respondents' contention that Appellant failed to file his brief to the tribunal has no basis.

CONCLUSION

Based on the foregoing reasons, Appellant requests this Honorable Court to deny Respondent's Motion to Strike Appellant's Brief, dated May 12, 2019 from the Designation, and to allow the same to be included for this Court's review.

Anderson, SC
October 31, 2019.



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Attorney for Appellant

**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

WCC File No.: 1322347
Appellate Case No.: 2019-001361

Courtney Ray Mitchell,

Appellant,

v.

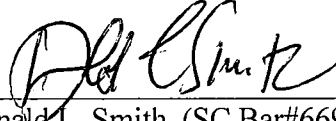
United Parcel Service and
Liberty Insurance Corporation,

Respondents.

PROOF OF SERVICE

I certify that I have served an original and six (6) copies of Appellant's Return to Motion to Strike Item from Designation of Matter, 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 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 October 31, 2019.

October 31, 2019



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FORM 8
LETTER TO THE APPELLATE COURT CLERK

October 31, 2019

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

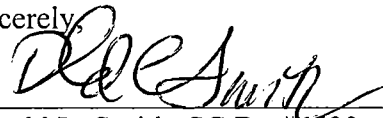
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NOV 04 2019
SC Court of Appeals

**RE: Courtney Ray Mitchell v. United Parcel Service and
Liberty Insurance Corporation
WCC File No.: 1322347**

Dear Ms. Kitchings:

Please find enclosed an original and six (6) copies of Appellant's Return to Respondents' Motion to Strike Item from Designation of Matter for filing in the above-mentioned case.

Sincerely,



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Attorney for Appellant
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attorneydonaldsmith@gmail.com

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

210 11270000 00000 0000
P.O. Box 2881
Aiken, SC 29802



The Honorable Jenny Abbott Kilchings
Clerk, SC Court of Appeals
P.O. Box 11629
Columbia, SC 29211

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