

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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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.

**REPLY TO RETURN TO
MOTION TO STRIKE ITEM FROM
DESIGNATION OF MATTER**

Pursuant to Rules 209, 210 and 240, SCACR, Respondents United Parcel Service and Liberty Mutual reply to Appellant Courtney Ray Mitchell's ("Appellant" or "Mitchell") Return to their Motion to Strike Item from Designation of Matter to be Included on Appeal ("Motion to Strike"). Appellant asserts that his appeal was dismissed because he filed his brief with the Commission one day late due to the actual due date falling on a weekend. However, pursuant to the Commission's regulations, if a due date falls on a weekend and or a holiday, the next business day is considered the due date. S.C. Code Reg. § 67-209(B) ("Saturdays, Sundays, State, and Federal holidays are included unless the designated time period ends on a Saturday, Sunday, State, or Federal holiday in which case the next day that is not a Saturday, Sunday, State, or Federal holiday is included as the last day"). Therefore, according to the Commission's own

regulations, it would not have dismissed Appellant's appeal if he had filed his brief on Monday, May 13, 2019, as he asserts he did, because it would in fact have been timely on that date.

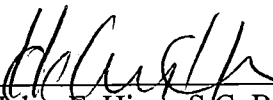
However, the Full Commission has confirmed that it did not receive any brief from Appellant on any date. (Exh. B, email from South Carolina Workers' Compensation Commission confirming no brief received from Appellant). In addition, Appellant never served Respondents with a Full Commission Appellant's Brief. (Exh. C). Appellant has not and cannot produce any evidence that he actually filed his brief with the Full Commission or served it on Respondents other than his unsupported assertions that he "believed that the Commission received Appellant's Brief, albeit, belatedly," and that he put it in the mail. The evidence shows otherwise and, because Mitchell's Appellant's Brief to the Full Commission was never submitted to the Commission, it cannot be included in the Record on Appeal.

CONCLUSION

For all the reasons set forth herein and in their Motion to Strike, this Court should strike "Appellant's Brief, May 12, 2019" from Appellant's Designation. Furthermore, Respondents renew their request that the deadline for filing their Initial Brief and Designation of Matter be suspended until this Court resolves this Motion.

November 6, 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*

Helen Hiser

From: Hollmon, Eugenia <EHollmon@wcc.sc.gov>
Sent: Tuesday, November 05, 2019 4:05 PM
To: Aleigh Gunby
Cc: Shayne Williams; 'attorneydonaldsmith@gmail.com'
Subject: RE: [External] RE: Mitchell - 1322347

No, a brief was never received and the file has been returned to general files.

Genia

Eugenia Hollmon
Judicial Docketing Director
803-737-5737
ehollmon@wcc.sc.gov

The Commission's new IT system "KERMIT" will go live December 4. The current system will go off-line November 23. Get all the updates including critical deadlines at <https://www.wcc.sc.gov/it-kermit-system-updates>.

From: Aleigh Gunby <aleigh.gunby@mgclaw.com>
Sent: Tuesday, November 5, 2019 10:35 AM
To: Hollmon, Eugenia <EHollmon@wcc.sc.gov>
Cc: Shayne Williams <shayne.williams@mgclaw.com>; 'attorneydonaldsmith@gmail.com' <attorneydonaldsmith@gmail.com>
Subject: [External] RE: Mitchell - 1322347

Good morning!

Could you please confirm if a brief was ever received by the Commission from Appellant, as it is not listed on eCase and we never received one.



Aleigh Gunby, Paralegal
aleigh.gunby@mgclaw.com
55 E. Camperdown Way Suite 300
Greenville, SC 29601
Main: 864-239-4000 | Direct: 864-239-6728 | Fax: 864-242-3199
VCARD

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From: "Hollmon, Eugenia" <EHollmon@wcc.sc.gov>

Date: Thu May 23 11:05:29 EDT 2019

To: "Don Smith" <attorneydonaldsmith@gmail.com>, "SHAYNE.WILLIAMS@MGCLAW.COM" <SHAYNE.WILLIAMS@mgclaw.com>

Cc: "Aleigh Gunby (aleigh.gunby@mgclaw.com)" <aleigh.gunby@mgclaw.com>

Subject: Mitchell - 1322347

Attached is an Administrative Dismissal.

Thank you.

Genia

Eugenia Hollmon

Judicial Docketing Director

803-737-5737

ehollmon@wcc.sc.gov

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Reply To
O. SHAYNE WILLIAMS
Direct Dial: (843) 848-6021
shayne.williams@mgclaw.com

June 19, 2019

VIA U.S. MAIL

Judicial Director
S. C. WORKERS' COMPENSATION COMMISSION
Post Office Box 1715
Columbia, South Carolina 29202-1715

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

Dear Sir or Madam:

Please find enclosed the original and three (3) copies of our Defendants' Reply to Claimant's Motion to Reinstate Appeal for filing.

By copy of this letter to Donald L. Smith, Esquire, the claimant's attorney, we are notifying him of this submission and serving a copy of the same upon him by mail.

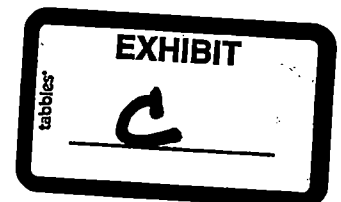
Very truly yours,



O. Shayne Williams

OSW/_ad
Enclosures

cc: Amy Stalnaker, Liberty Mutual (via email)
Will Fletcher, UPS (via email)
Donald L. Smith, Esquire, Attorney Office of Donald Smith (via US mail)



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 GOUDELOCK & 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:

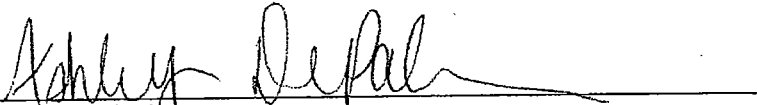
TO: Donald L. Smith, Esquire
Attorney Office of Donald Smith
122 North Main Street
Anderson, South Carolina 29621

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

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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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 6th day of November 2019, I served Respondents United Parcel Service and Liberty Mutual's **Reply to Return to Motion to Strike Item from Designation of Matter** 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

November 6, 2019

Via U.S. Mail

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

RECEIVED
NOV 08 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' Reply to Return to Motion to Strike Item from Designation of Matter, 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.



mgc | INSURANCE
DEFENSE
POST OFFICE BOX 430027
MT PLEASANT, SC 29465

2095.15004/HFH/mtb
The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

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SC Court of Appeals

