

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SOUTH CAROLINA WORKER'S COMPENSATION COMMISSION
Full Appellate Panel

Case No. 2016-000598

Clarence B. Jenkins [REDACTED], Employee, Appellant,

v.

Amazon DEDC, LLC, Employer and
American Zurich Ins. Co., Carrier, Respondents.

FINAL BRIEF OF APPELLANT

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SC Court of Appeals

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STATEMENT OF ISSUES ON APPEAL

1. AMAZON.COM DEDC, LLC AND AMERICAN ZURICH INSURANCE HAS REFUSED TO PROVIDE SUFFICIENT MEDICAL CARE AS RECOMMENDED BY ASSIGNED WORKER'S COMPENSATION DOCTOR, DR. MAHMOUD ABU-ATA AND OTHERS, MAY 21, 2015 TRANSCRIPT PP.3-19, P.110 LINE 18, P.112 LINES 1-14, DECEMBER 14, 2015 TRANSCRIPT P.8 LINES 21-24, OBJECTIONS P.26 LINES 17-19, EXHIBIT FORM 50.
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3. AMAZON.COM DEDC, LLC AND AMERICAN ZURICH INSURANCE HAS ALL MEDICAL RECORDS PRIOR TO COURT PROCEEDING THEREFORE RESPONDENTS CLAIMS OF EXPERT DOCUMENTARIES IS A DISTORTED FACT ACCEPTED BY SOUTH CAROLINA WORKER'S COMPENSATION COMMISSION, MAY 21, 2015 TRANSCRIPT PP.3-19. P.110 LINES 1-18, DECEMBER 14, 2015 TRANSCRIPT, P.6 LINES 11-25, P.8 LINES 21-24, P.19 LINES 7-25, OBJECTIONS P.6 LINES 13-25, OBJECTIONS P.7 LINES 1-25, EXHIBIT S.C 42-9-440.
4. SOUTH CAROLINA WORKER'S COMPENSATION COMMISSION VIOLATED THEIR OWN POLICY BY NOT REQUIRING FORM 14B TO COMPLETED BY ASSIGNED WORKER'S COMPENSATION DOCTOR., DR. MAHMOUD ABU-ATA, MAY 21, 2015 TRANSCRIPT PP.3-19, P.110 LINES 1-18, P.112 LINES 1-14. DECEMBER 14, 2015 TRANSCRIPT, P.8 LINES 21-24. P.10 LINES 22-25, OBJECTIONS P.26 LINES 17-19, EXHIBIT S.C. 42-9-440.
5. AMAZON.COM DEDC, LLC AND AMERICAN ZURICH INSURANCE DISTORTED APPELLANT MEDICAL, SUPPORTIVE, DISABILITY AND UNEMPLOYMENT RECORDS THEREFORE COMMITTED FRAUD MAY 21, 2015 TRANSCRIPT P.99 LINES 1-14, P.110 LINES 1-18, OBJECTIONS P.99 LINES 10-11, DECEMBER 14, 2015 TRANSCRIPT, P.8 LINES 21-24, P.10 LINES 22-25, P.13 LINES 5-10, OBJECTIONS P.26 LINES 17-19, EXHIBIT S.C 42-9-440

6. SOUTH CAROLINA WORKER'S COMPENSATION APPELLATE FULL COMMISSION HAD DISCUSSIONS REGARDING MOTION FILED BY APPELLANT AND RESPONDENTS IN THEIR ABSENT AND OFF THE RECORD IN A LEGAL PROCEEDINGS DECEMBER 14, 2015 TRANSCRIPT P.9 LINES 24-25, P.10 LINES 1-4, OBJECTIONS P.10 LINES 22-25, OBJECTIONS P.11 LINES 4-5, OBJECTIONS P.11 LINES 8-9, OBJECTIONS P.11 LINES 24-25, OBJECTIONS P.26 LINES 17-19.
7. SOUTH CAROLINA WORKER'S COMPENSATION APPELLATE PANEL CAME BACK ON RECORD WITH A DECISION AND DID NOT PROVIDE AN EXPLANATION FOR THEIR REASON FOR ACCEPTING RESPONDENT'S MOTIONS AND DENYING APPELLANT'S MOTION REGARDING MOTIONS AFTER HAVING DISCUSSION OFF THE RECORD DECEMBER 14, 2015 TRANSCRIPT P.8 LINES 21-24, P.10 LINES 5-25, P.11 LINES 1-25, OBJECTIONS P.11 LINES 4-5, OBJECTIONS P.11 LINES 8-9, OBJECTIONS P.11 LINES 24-25, OBJECTIONS P. 12 LINES 4-5, OBJECTIONS P.12 LINES 8-9, OBJECTIONS P.12 LINES 24-25, OBJECTIONS P.26 LINES 17-19.
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10. AMAZON.COM DEDC, LLC AND AMERICAN ZURICH INSURANCE FAILED TO COMPLETE DEPOSITION ON NOVEMBER 10, 2014 WITH ASSIGNED WORKER'S COMPENSATION DOCTOR, DR. MAHMOUD ABU-ATA AS SCHEDULED MAY 21, 2015 TRANSCRIPT PP.3-19, P.110 LINES 1-18, DECEMBER 14, 2015 TRANSCRIPT P.8 LINES 21-24, P.10 LINES 22-25, EXHIBIT NOTIFICATION OF DEPOSITION FOR DR. MAHMOUD ABU-ATA, EXHIBIT S.C.42-9-440.

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STATEMENT OF THE CASE

On February 10, 2013, Clarence B. Jenkins Jr., Appellant sustain a work related injury to the head while working Amazon Fulfillment Center in, West Columbia, SC. Respondents has admitted that Appellant did sustain the work injury on February 10, 2013 and has accepted responsibility. Appellant has been diagnose with post syndrome concussion which has become disabling with other medical problems. Appellant was placed on a leave of absent from Amazon Fulfillment Center at least three times due injury, medical symptoms and medical documentations. I was approved to see Dr. Mahmoud Abu-Ata at Orangeburg Neurology and Pain Clinic by Amazon.Com DEDC, LLC and American Zurich Insurance because of post concussion syndrome which existed which is compensable, work related injury as in Shatto v. Mcleod Regional Medical Center, 406 S.C. 470, 753 S.E. 2d 416 (2013).

Dr. Mahmoud Abu-Ata of Orangeburg Neurology and Pain Clinic began providing medical care to Appellant because of post concussion syndrome. I saw Dr. Mahmud Abu-Ata at least five times from August, 2013 to October, 2014. Dr. Mahmoud Abu-Ata continued work restrictions in February 21, 2014 to avoid bright lights and loud noises. Amazon.Com DEDC.LLC and American Zurich Insurance provided work restrictions because of work injury from September 22, 2013 to February 9, 2014. Dr. Mahmoud Abu-Ata continued work restrictions in October 23, 2014. Dr. Mahmoud Abu-Ata, assigned worker's compensation doctor refused to provide a medical rating due to additional recommended medical evaluation referrals to a neuro surgeon, neuro psychologist and spine specialist because repetitive trauma which is compensable under South Carolina Worker's Compensation Commission Act because Appellant has not work and received medical care under South Carolina Worker's Compensation Commission Act. As in Ralph Duane King Jr, v. International Knife and Saw-Florence, 395 S.C. 437, 718 S.E. 2d 227 (Ct. App. 2011).

In Burnett v. City of Greenville 400 S.C. 417, 737 S.E. 2d 200 (2012) requirements was met as I was already working at Amazon.Com DEDC, LLC on work

restrictions. Dr. Mahmoud Abu-Ata did not place me out of work but Amazon.Com DEDC, LLC Human resources Office. I was denied short-term disability benefits even though medical documentations from Dr. Mahmoud Abu-Ata confirming medical symptoms which were ignored. I have not received additional worker's compensation or disability benefits since January, 2015.

Appellant provides Amazon.Com DEDC, LLC and American Zurich Insurance with medical status even though worker's compensation benefits are not being paid and suitable employment have not been provided. Appellant has been evaluated and treated therefore documented for several years that concluded that symptoms of a post concussion syndrome as long-term and repetitive trauma requiring additional medical care and medication as in *Ralph Duane King Jr, v. International Knife and Saw-Florence*, 395 S.C. 437, 718, S.E. 2d 227 (Ct. App. 2011).

STATEMENT OF FACT

Appellant received a work injury to the head on February 10, 2013 at Amazon.Com Fulfillment Center in West Columbia, South Carolina. Appellant sustained a post concussion syndrome as documented for several years which has been disregarded by Amazon.Com DEDC, LLC and American Zurich Insurance. Amazon.Com DEDC, LLC and American Zurich Insurance has been provided all medical records through subpoenas and provided by Appellant. South Carolina Worker's Compensation Commission violated their own policy of R67-611 and the requirement of Form 14B. Exhibit R67-611, Exhibit South Carolina Worker's Compensation Commission Regulatory Advisory dated January 25, 2012.

Former Commissioner Andrea C. Roche as a Finding of Fact, P.3 in her Decision and Order dated May 27, 2014 that Claimant has received medical evaluation and/or treatment by Dr. Mahmoud Abu-Ata. Defendants have furnished and authorized medical evaluation and/or treatment by Dr. Mahmoud Abu-Ata. South Carolina Worker's Compensation Appellate Panel in their Decision and Order dated November 18, 2014 as a Finding of Fact, P.3 that Claimant has received medical evaluation and/or treatment by Dr. Abu-Ata. Respondents have furnished and authorized medical evaluation and/or treatment by Dr. Mahmoud Abu-Ata.

ARGUMENT

1. RESPONDENTS HAS ADMITTED TO WORK INJURY OF, MAY 21, 2015 TRANSCRIPT. PP.3-19, DECEMBER 14, 2015 TRANSCRIPT, P.6 LINES 11-25, EXHIBIT S.C. 42-1-160 (A), S.C. 42-9-10 (A,C).

2. SINGLE COMMISSIONER MICHAEL CAMPBELL II. AND SOUTH CAROLINA WORKER'S COMPENSATION FULL APPELLATE PANEL OF DECEMBER 14, 2015 ERRED BY ISSUING AN ORDER AND DECISION DENYING FURTHER MEDICAL CARE AND COMPENSATION BECAUSE FORMER COMMISSIONER ANDREA C. ROCHE ON MAY 27, 2014 AND SOUTH CAROLINA WORKER'S COMPENSATION FULL APPELLATE PANEL ON NOVEMBER 18, 2014 HAD ALREADY AFFIRMED THAT DR. MAHMOUD ABU-ATA WAS APPROVED TO EVALUATE AND /OR TREATMENT TO CLAIMANT THEREFORE HAVING NOT OBTAIN A MEDICAL RATING OR A MEDICAL RELEASE FROM DR. MAHMOUD ABU-ATA VIOLATED MY RIGHTS UNDER SOUTH CAROLINA WORKER'S COMPENSATION ACT, DECEMBER 14, 2015 TRANSCRIPT, OBJECTIONS P.26 LINES 17-19, DECISION AND ORDER DATED MAY 27, 2014 AND DECISION AND ORDER DATED NOVEMBER 18, 2014.
3. APPELLANT HAS NOT REACHED MAXIMUM MEDICAL IMPROVEMENT ON OCTOBER 23, 2013 AS STATED BY RESPONDENTS BECAUSE ASSIGNED WORKER'S COMPENSATION DOCTOR, DR. MAHMOUD ABU-ATA HAS NOT RELEASED CLAIMANT, MAY 21, 2015 TRANSCRIPT P.3 LINES 13-21, P.110 LINE 18. DECEMBER 14, 2015, TRANSCRIPT P.7 LINES 10-25, P. 8 LINES 1-15, P.8 LINES 21-24, P.99 LINES 1-3, OBJECTIONS P.7 LINES 1-25, OBJECTIONS P.6 LINES 13-25, EXHIBIT SOUTH CAROLINA WORKER'S COMPENSATION REGULATORY ADVISORY DATED JANUARY 25, 2012, EXHIBIT 42-9-440.
4. DR. MAHMOUD ABU-ATA, ASSIGNED WORKER'S COMPENSATION DOCTOR HAS REFUSED TO PROVIDE A MEDICAL RATING, PHYSICIAN STATEMENT AND A RELEASE MAY 21, 2015 TRANSCRIPT, P.4 LINES 16-25, P.110 LINE 18, DECEMBER 14, 2015 TRANSCRIPT P.5 LINES 1-10, P.6 LINES 13-15, P.8 LINES 21-24, OBJECTIONS P.6 LINES 13-25, OBJECTIONS P.7 LINES 1-25, OBJECTIONS P.26 LINES 17-19, EXHIBIT SOUTH CAROLINA WORKER'S COMPENSATION REGULATORY ADVISORY DATED JANUARY 25, 2012, EXHIBIT S.C. 42-1-160 (A), S.C. 42-9-10 (A,C).

5. DR. MAHMOUD ABU-ATA HAS REFUSED TO COMPLETE FORM 14B BECAUSE OF MEDICAL SYMPTOMS FROM POST CONCUSSION SUSTAIN FROM WORK INJURY ON FEBRUARY 10, 2013 AS REQUIRED BY SOUTH CAROLINA WORKER'S COMPENSATION COMMISSION WHEN AN EMPLOYER STATES MAXIMUM MEDICAL IMPROVEMENT, MAY 21, 2015 TRANSCRIPT P.3 LINE 13-21, P.110 LINE 18, DECEMBER 14, 2015 TRANSCRIPT P.8 LINES 21-24, OBJECTIONS P.6 LINES 13-25, OBJECTIONS P.7 LINES 1-25, EXHIBIT SOUTH CAROLINA WORKER'S COMPENSATION COMMISSION REGULATORY ADVISORY DATED JANUARY 25, 2012, EXHIBIT S.C. 42-9-440.
6. COMMISSIONER MICHAEL CAMPBELL II MADE AN EGREGIOUS ERROR REGARDING SOUTH CAROLINA WORKER'S COMPENSATION COMMISSION LAW R67-611 AT MAY 21, 2015 HEARING WHEN HE REFUSED TO ALLOW APPELLANT TO ENTER PERTINENT MEDICAL RECORDS AND SUPPORTIVE DOCUMENTATIONS PERTAINING TO WORK INJURY CLAIM STATING THAT A PRO SE HAD TO FILED A PRE-LEGAL BRIEF WHICH IS INCORRECT INTERPRETATION OF THE LAW, MAY 21, 2015 TRANSCRIPT, P.4 LINES 1-25, P.5 LINES 1-25, P.70 LINES 15-22, P.88 LINES 21-25, OBJECTIONS P.70 LINE 23, OBJECTIONS P.89 LINES 3-13, OBJECTIONS P.99 LINES 4-14, OBJECTIONS P.99 LINES 10-11, DECEMBER 14, 2015, TRANSCRIPT P.8 LINES 21-24, P.13 LINES 1-5, P.13 LINES 23-24, P.14 LINES 1-5, OBJECTIONS P.6 LINES 13-25, OBJECTIONS P.7 LINES 1-25, OBJECTIONS P.26 LINES 17-19, EXHIBIT R67-611 LAW.
7. AMAZON.COM DEDC, LLC AND AMERICAN ZURICH HAS DISTORTED APPELLANT PERTINENT MEDICAL DOCUMENTATIONS WHEN RECORDS WAS PROVIDED BY APPELLANT OR THROUGH SUBPOENAS FROM RESPONDENTS MAY 21, 2015 TRANSCRIPT, P.110 LINES 1-18, P.111 LINES 1-7, DECEMBER 14, 2015 TRANSCRIPT P.8 LINES 21-24, OBJECTIONS P.19 LINES 20-24, P.26 LINES 17-19, EXHIBIT S.C. 42-9-440.
11. COMMISSIONER MICHAEL CAMPBELL II. WAS BIASED AND PREJUDICE AT MAY 21, 2015 HEARING BECAUSE APPELLANT WAS HELD TO A DIFFERENT SET OF STANDARDS WHICH WAS A DISADVANTAGE COMPARED TO RESPONDENT'S DEFENSE ON

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12. SOUTH CAROLINA WORKER'S COMPENSATION FULL APPELLATE PANEL WAS BIASED AND PREJUDICE AT DECEMBER 14, 2015 HEARING BECAUSE IT NEVER ACCEPTED VIOLATION R67-611 OF SOUTH CAROLINA WORKER'S COMPENSATION COMMISSION LAW DECEMBER 14, 2015 TRANSCRIPT, P.7 LINES 10-25, P.8 LINES 21-24, P. 9 LINES 5-20, P.10 LINES 5-10, P.13 LINES 1-5, P.14 LINES 1-25, P.15 LINES 1-25, P.16 LINES 1-22, P.17, LINES 1-25, P.18 LINES 1-18, P.19 LINES 1-25, P.20 LINES 1-21, P.23 LINES 10-25, P.24 LINES 1-15, P.25 LINES 4-25, P.26 LINES 1-8, OBJECTIONS P.11 LINES 4-9, OBJECTIONS P.11 LINES 24-25, EXHIBIT R67-611.
13. AMAZON.COM DEDC, LLC AND AMERICAN ZURICH INSURANCE PROVIDED NOTIFICATION THAT DEPOSITION WITH ASSIGNED WORKER'S COMPENSATION DOCTOR, DR. MAHMOUD ABU-ATA WAS SCHEDULED AND CONFIRMED FOR NOVEMBER 10, 2014 WHICH NEVER TOOK PLACE, MAY 21, 2015 TRANSCRIPT, P.3-19, P.110 LINES 18, DECEMBER 14, 2015 TRANSCRIPT, P.8 LINES 21-24, OBJECTIONS P.6 LINES 13-25, OBJECTIONS P.7 LINES 1-25, EXHIBIT NOTIFICATION OF DR. MAHMOUD ABU-ATA DEPOSITION DATED NOVEMBER 10,2014.
14. AMAZON.COM DEDC, LLC AND AMERICAN ZURICH INSURANCE PROVIDED MEDICAL CARE PAST THE MAXIMUM MEDICAL IMPROVEMENT DATE OF OCTOBER 23, 2013 DUE THE ASSIGNING WORKER'S COMPENSATION NURSE, KELLY WELLS THAT ATTENDED MEDICAL APPOINTMENTS WITH DR. MAHMOUD ABU-ATA ON FEBRUARY 21, 2014 AND JUNE 20, 2014, MAY 21, 2015 TRANSCRIPT PP. 3-19, 2014, P.112 LINES 1-14. OBJECTIONS P.6 LINES 13-25, OBJECTIONS P.7 LINES 1-25, EXHIBITS S.C. 42-1-160 (A), S.C. 42-9-10 (A,C), S.C. 42-9-440.

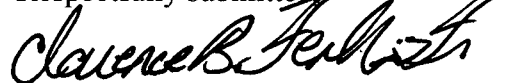
15. NURSE, KELLY WELLS ATTENDED MEDICAL APPOINTMENT WITH DR. STICKLER ON AUGUST 13, 2014 AND AUGUST 20, 2014 WHICH IS AFTER THE AMAZON.COM DEDC, LLC AND AMERICAN ZURICH INSURANCE CLAIMED OF MAXIMUM MEDICAL IMPROVEMENT OF OCTOBER 23, 2013, MAY 21, 2015 TRANSCRIPT P.95 LINES 3-22, P.99 LINES 15-25, P.112 LINES 1-14. DECEMBER 14, 2015, TRANSCRIPT P.8 LINES 21-24, OBJECTIONS P.6 LINES 13-25, OBJECTIONS P.7 LINES 1-25, OBJECTIONS P.26 LINES 17-19, EXHIBITS S.C. 42-1-160 (A), S.C. 42-9-10 (A,C), S.C. 42-9-440.
16. SOUTH CAROLINA WORKER'S COMPENSATION COMMISSION HAS RECEIVED EXTENSIVE MEDICAL TRAINING PERTAINING TO EFFECTS OF HEAD INJURIES WHICH CONFIRMS APPELLANT CURRENT AND PAST MEDICAL SYMPTOMS THEREFORE SHOWS A NEGLIGENCE TO RULED IN FAVOR OF RESPONDENTS, MAY 21, 2015 TRANSCRIPT PP, 3-19, P.107 LINES 1-10, OBJECTIONS P.107 LINES 11-12.
17. SINGLE COMMISSIONER MICHAEL CAMPBELL II AND SOUTH CAROLINA WORKER'S COMPENSATION FULL APPELLATE PANEL ERR WITH REGARDS TO R67-612 BECAUSE CLAIMANT PROVIDED NO EXPERT OPINION AT MAY 21, 2015 HEARING. DECEMBER 14, 2015 TRANSCRIPT, P.8 LINES 21-24, P.19 LINES 6 - 16, OBJECTIONS P.19 LINES 20-25, OBJECTIONS P.20 LINES 1-7, OBJECTIONS P.26 LINES 17-19.

CONCLUSION

For the reasons stated, this Court should reverse the judgment of the circuit court.

December 28, 2017

Respectfully submitted,



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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SOUTH CAROLINA WORKER'S COMPENSATION COMMISSION
APPELLATE PANEL

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v. **RECEIVED**

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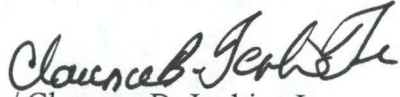
SC Court of Appeals

Respondents.

CERTIFICATE OF COUNSEL

The undersigned certified that this Final Brief complies with Rule 211(b), SCACR.

December ~~28~~ 28, 2017


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