

**FORM 13
BRIEF OF APPELLANTE**

THE STATE OF SOUTH CAROLINA
[In The Court Of Appeals]

APPEAL FROM SOUTH CAROLINA
WORKERS COMPENSATION COMMISSION

RECEIVED
JAN 13 2020
SC Court of Appeals

COMMISSIONER CAMPBELL, MCCASKILL, and MCCOY; CHAIR
Case No. 2019-001851

Nathaniel Spann, Employee, Appellant,

V.

Professional Systems, Employer and Liberty Mutual, Carrier,
Respondents

[Intial] BRIEF OF APPELLANT

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Pro Se

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1. Because the Appellant was not attempting to reliterate Commissioner decision solely but was attempting to present old key evidence that was mishandled during the trial, The use of Doctrine of *RES JUDICATA* to barred Claimant is inappropriate for this case. # Based on the cause in the suit. [Section 11 of Code of Civil Procedure.].....6
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STATEMENT OF THE ISSUE ON APPEAL

1. DID THE SOUTH CAROLINA COMMISSIONER ERR IN FINDING BARRING THE CLAIM BASED ON THE DOCTRINE OF *RES JUDICATA* APPROPRIATE?
2. DID THE COURT ERR IN ADDRESSING THE APPROPRIATE ISSUE THAT WAS BROUGHT BY THE PRO SE APPELLANT/ CLAIMANT THAT KEY EVIDENCE WAS MISHANDLED IN THE TRIAL?
3. DID THE SOUTH CAROLINA WORKERS COMPENSATION COMMISSION ERR IN PROVIDING THE APPELLANT DUE PROCESS OF LAW?
4. DID THE SOUTH CAROLINA WORKERS COMPENSATION COMMISSION ERR IN THE HANDLING OF EVIDENCE BY AN OMISSION, AN OVERSIGHT, AND A MISHANDLING OF KEY EVIDENCE IN THE TRIAL?
5. DID THE SOUTH CAROLINA WORKERS COMPENSATION COMMISSION ERR IN GRANTING THE APPELLANT A FAIR HEARING?

STATEMENT OF THE CASE

Claimant sustained a work-related injury to his back on or about September 12, 2013. As such, the defendants provided treatment with various physicians, including back specialists, and temporary total compensation while he was out of work for his injury.

Dr. Michael Peelle reviewed the Claimants medical records and treated him before releasing him at maximum medical improvement with a 0% impairment rating on August 29, 2014.

Claimant filed a Form 50 Request for Hearing on November 14, 2014 requesting a doctor's appointment to obtain a impairment rating.

Defendants subsequently filed a Form 21 Request for a Hearing on December 16, 2014 seeking to stop temporary total compensation, credit for overpayment of temporary total compensation and a determination as to a disability award, if any, to the claimants back.

A Hearing was held before Commissioner Campbell on March 31, 2015. During the pre-hearing conference, Claimant did dispute he had reached maximum medical improvement and Claimant asked to be sent to another doctor to get another opinion. Rather the Court stated that Claimant did not dispute. Claimant felt as if the impairment rating by Dr. Peelle that was assigned by Dr. Peelle on August 29, 2014 was inaccurate due to the medical diagnosis. [Full Commission Panel Hearing Transcript. Tuesday, February 23, 2016] [In Med radiology report 3/12/2014} { 6/27/2014 In Med Medical office visit Dr. Houdson opined that Appellant needed to file for disability.]

Defendants argued Claimant has a long history of back problems stemming from previous workers compensation claims and that the

accident on September 12, 2013 did not cause any additional permanent impairment to Claimants's back. Additionally, Defendants argue Dr. Peelle's impairment rating was properly assigned to a reasonable degree of medical certainty under the AMA Guides. Defendants also argued that they are entitled to credits for overpayment of TTD dating back to August 29, 2014 which is when claimant reached maxium medical improvement. It is plainly obvious that the Claimant was working up until this September 12, 2013 injury which afterwards he could not no longer work.

Commissioner Campbell determined (1) the claimnant substained 4% permanent partial disability to his back, (2) the claimnant was not entitled to additional medical treatment, and (3) the defendents were paid to December 16, 2014. Claimant appealed the order, and the Full Commission affirmed on April 25, 2016.

The Claimant subsequently appealed to the Court of Appeals dismissed the appeal on July 7, 2016. Subsequently to the dismissal, the Claimant and new Form 50, and a hearing was scheduled for April 12, 2018. Prior to the hearing, the Claimant withdrew the form 50.

The Claimant subsequently filed a Form 50 Request for a Hearing

on November 8, 2018. The Claimant's Form 50 requests finding that the Claimant is entitled to temporary total disability benefits and that he is permanently and totally disabled. A hearing was held on March 4, 2019.

Pursuant to a May 2, 2019 Order, Commissioner Wilkerson barred the claim Pursuant to the doctrine of *res judicata*. The claimant subsequently filed a Form 30 on May 21, 2019.

An Appeal Hearing was heard on August 19, 2019. The Commissioners affirmed that the doctrine of RES JUDICATA stands and has barred the claimant.

STANDARD OF REVIEW

[Determination of *res judicata*. Reviewed de novo ***Porter V. United Tech Corp.***, 206 F. 3d 1147, 1149 (11th Cir. 2000)]

FACTS

The Appellant Nathaniel Spann Employee /Claimant was hurt on his job on Around September 12, 2013. Claimant was treated By Dr. Peelle who rating the claimant with a 0% disability rating with regards to the september 12, 2013 injury. A hearing was held by the South Carolina Workers

Compensation Commission and the Commissioners rated the Claimant 4% rating. The Claimant who is the ProSE Appellant has addressed the courts in the initial hearing about the Key evidence that was left out even during the trial and it was not addressed and Commissioner Campbell rendered an opinion in an order that was filed on December 1, 2015 without the consideration of the key evidence. The Appellant has been trying to Present that evidence on Appeals and the appellant courts has always addressed the wrong issues, even when it has been stated that Key evidence is the issue on the Appellants brief. At the hearing on December 1, 2015 the Pro SE appellant statement of being in court because he disagreed with Commissioner Campbell decision was simply the answer to a general and broad opening question by the Commissioner and not a statement of his case. Due Process of Law would allow a Pro SE Appellant the right to open with presenting his case not answering one broad question that would be assumed to be his case. This one broad opening question by the Commissioner has barred the Claimant by the a Doctrine of RES JUDICATA. The Appellant is asking reconsideration by the Court of Appeals of South Carolina.

ARGUMENTS

[Determination of res judicata. Reviewed de novo **Portor V. United Tech Corp.**, 206 F. 3d 1147, 1149 (11th Cir. 2000)]

1. Because the Appellant was not attempting to reliterate Commissioner decision solely but was attempting to present old key evidence that was mishandled during the trial, The use of Doctrine of *RES JUDICATA* to barred Claimant is inappropriate for this case. # Based on the cause in the suit. [Section 11 of Code of Civil Procedure.]

[Abuse of Discretion. Review **Alexander V. Fulton County.**, 207 F.3d 1303 1326 (Uth Cir. 2000)]

2. Because the court failed to allowed the Pro se Appellant and Claimant to Present his case by the Commissioners very broad /general questioning of the Claimant instead and not allowing the Claimant to present the facts entirely. The Appellant was not given a fair trial. [Article6] [Article 10]

3. Because the appellate courts addressed the incorrect issues, the appellant asked for representation and was told that necessarily he didn't need it. The Appellant was denied due process of Law. [The 14 Amendment ratified in 1868]

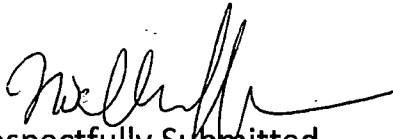
[Substantial Evidence. **Richardson V. Perales**, 402 U.S. 389 (1971)

4. Because key evidence in the trial of Dr. Pelle medical physician written report was Mishandled the original opinion could have been different and the appellate process of a hearing is appropriate and barring the claim based on the doctrine of Res Judicata is inappropriate. [Rule 37 of The Federal Rule of Civil Procedure]

CONCLUSION

The Appellant Nathaniel Spann respectfully request that THE STATE OF

SOUTH CAROLINA COURT OF APPEALS Finds that he was not given a fair trial upon viewing all of the court transcripts, upon viewing the issues that were before the courts, veiwing the Claimants testimony, viewing the questioning of the Claimant by the Commissioners and find that the courts heard the wrong issues due to the Pro se Appellant wasn't given a fair opportunity to state his case. The courts never addressed the issue that the Appellant/ Claimant brought before the prior court that Key evidence at the hearing was mishandled and thus the decision of Commissioner Campbell was limited to what appeared before him. The claimant was not seeking to solely relitigate the original hearing decision issued by Comissioner Campbell on December 1, 2015 that would make res judicata appropriate but was seeking to allow the old evidence that was mishandled to be heard that could have rendered a different decision by Commissioner Campbell and be given a fair hearing.


Respectfully Submitted
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