

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

**APPEAL FROM SC WORKERS COMPENSATION FULL COMMISSION
JUDICIAL CONFERENCE**

Full Commission Judicial Conference

SCWCC: 1320773
S.C. Court of Appeals Case No. 2019-001190

Tammy Jordan,

Respondent,

The Hartford Financial
Group, Inc,

Appellant.

Resurgent Capital Services

Employer

Interstate Contact Cleaning
Services, Inc.

Third Party Tortfeasor

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SC Court of Appeals

INITIAL BRIEF OF RESPONDENT

Greenville, SC
January 29, 2020

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STATEMENT OF ISSUES ON APPEAL

Did the SC Workers' Compensation Commission abuse its discretion in (1) Dismissing Appellant's Appeal to the Full Commission, and thereafter (2) Denying Appellant's Motion for Reinstatement, all because of the Appellant's failure to abide by the Commission's time deadlines set for filing?

STATEMENT OF THE CASE

This is an appeal from the SC Workers' Compensation Commission, in which the Respondent was the Claimant. It does not involve any disputed evidentiary facts regarding the underlying claim of the Claimant below. It is an appeal based solely upon matters of procedure that Appellant counsel overlooked below in the SC Workers' Compensation Commission, which counsel then sought to correct by a Motion for Reinstatement. Appellant's counsel admits he mis-calendared the due date for the Appellant's Brief to the Commission, which was then scheduled to be filed no later than May 12, 2019. (Appellant's Initial Brief at p. 3). Because that deadline was missed, the Judicial Director of the Commission Administratively Dismissed the appeal by default on May 23, 2019. (R. ____). Upon receipt of the Commission's Administrative Order dated May 23, 2019 (R. ____), Appellant's counsel then filed a Motion to Reinstate, along with the overlooked Brief. Both were filed on May 28, 2019. (R. ____). At a Judicial conference on June 17, 2019, the Full Commission considered the Motion to Reinstate without a hearing and Denied the Motion. (R. ____). That Order was dated and served June 17, 2019. (R. ____). This appeal follows arguing that "good cause" exists for the appeal below to be reinstated, asserting that the Commission was "clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record." (See Appellant's Initial Brief at p. 3).

STANDARD OF REVIEW

The Administrative Procedures Act ["APA"] establishes the standard of review for decisions by the South Carolina Workers' Compensation Commission. See SC Code Ann. § 1-23-380. "An appellate court has the power upon review to reverse or modify a decision of an administrative agency if the findings and conclusions of the agency are (1) affected by an error

of law, (2) clearly erroneous in view of the reliable and substantial evidence on the whole record, or (3) arbitrary or capricious or characterized by abuse of discretion or a clearly unwarranted exercise of discretion." *James v. Anne's Inc.*, 386 S.C. 326, 688 S.E.2d 562 (2010); *Gray v. Club Group, Ltd.*, 339 S.C. 173, 182, 528 S.E.2d 435, 440 (Ct. App. 2000).

ARGUMENT

The Workers' Compensation Commission correctly ruled that Appellant's failure to timely file the Appellant's Brief on appeal to the Full Commission was grounds for Administrative Dismissal by default, and the Commission did not abuse its discretion in so holding. It was proper for the Commission to dismiss the Appellant's appeal by default. There is no argument that dismissal was for the sole reason of default, having nothing to do with an evaluation of the evidence.

The issue before the Court is whether the Commission below erred in denying Appellant's Motion to Reinstate in light of Appellant's counsel failure below to timely file the Appellant's Brief. The Commission is empowered by the Legislature to promulgate all regulations relating to the administration of the workers' compensation laws of this State necessary to implement the provisions of S.C Code Ann. § 42-3-30. "Workers' compensation boards or commissions are generally empowered to make and enforce rules and regulations to enable the board or the commission to carry out ... its duties, and such rules and regulations have the force and effect of law if reasonable and not inconsistent with pertinent statutory provisions." *James*, 390 S.C. at 201, 701 S.E.2d at 736-37.

Under S.C Regulation 67-704, the Commission had full authority and discretion to set the schedule for any briefings to be filed on appeal. By letter dated April 12, 2019, the

Commission set the filing date for Appellant's Brief as May 12, 2019. (R. _____). There can be no question that the Commission did not abuse its discretion in establishing the schedule of the Commission. While Appellant herein wants to claim this case should be remanded for "substantial evidence in the whole record," there is simply no error here on the part of the Commission in evaluating the evidence. The error, respectfully and regrettably, was on the part of Appellant's counsel. The Order of the Commission is clearly predicated upon the Appellant's default below, and there is nothing in the "whole record" below that will excuse the omission of the Appellant to follow the Commission's scheduling. The error made here was not due to any unavoidable circumstance, or circumstances beyond Appellant's control. Mis-calendaring the deadline to file the brief below was not unavoidable, it was careless. It simply cannot be the basis for a showing of "good cause" whether made intentionally or carelessly. The decision of the Commission below was entered as a matter of default. The only legal question properly to be considered is whether the Commission abused its discretion in holding Appellant in default.

The decision to grant relief from an entry of default is "solely within the sound discretion of the trial court," or in this case, the Commission serving as the trial agency. *See, Wham v. Shearson Lehman Bros., Inc.*, 298 S.C. 462, 465, 381 S.E.2d 499, 501 (Ct. App. 1989). "The appellate court cannot substitute its judgment for that of the trial judge absent a clear showing of abuse of discretion." *Beckham v. Durant*, 300 S.C. 329, 333, 387 S.E.2d 701, 704 (Ct. App. 1989).

The Commission's decision can be set aside if it is unsupported by "substantial evidence." *Lark v. Bi-Lo, Inc.*, 276 S.C.130, 136, 276 S.E.2d 304-307 (1981). " 'Substantial evidence' is not a mere scintilla of evidence, nor 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." *S.C Coastal Conservation League v. S.C. Department of Health & Environmental Control*, 363 S.C. 67, 76, 610 S.E. 482, 487 (2005). In the case now before the Court, there is no real argument that reasonable minds wouldn't have ever reached the same conclusion as the Commission, in light of the underlying default. What the Commission did was entirely reasonable and within their sound discretion.

The party challenging a governmental agency's decision bears the burden of proving the decision is arbitrary or unsupported by the evidence. *Pressley v. Lancaster County*, 343 S.C. 696, 704, 542 S.E.2d 366, 370 (Ct. App. 2001); *Bursey v. S.C Department of Health & Environmental Control*, 360 S.C. 135, 142, 600 S.E.2d 80, 84 (Ct. App. 2004), *affirmed*, 369 S.C. 176, 631 S.E.,2d 899 (2006). Respectfully, Appellant herein has failed to meet its burden.

CONCLUSION

The Commission below did not abuse its discretion in holding the Appellant in default. The failure to properly calendar court deadlines is not evidence of "good cause" such that default should be set aside. Respondent respectfully requests that this appeal be DENIED.

RESPECTFULLY SUBMITTED:



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Third Party Tortfeasor

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PROOF OF SERVICE

I certify that I have served the Initial Brief of Respondent and Respondent's Designation of Matter on Appeal on Appellant by depositing a copy of it in the United States Mail, postage prepaid, on January 29, 2020, addressed to attorney of record, Stephen T. Anderson, P.O. Box 6728, Greenville, SC 29606.



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The Honorable Jenny Abbott Kitchings
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Re: Tammy Jordan v. Resurgent Capital Services
SCWCC: 1320773
S.C. Court of Appeals Case No. 2019-001190

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Dear Ms. Kitchings:

Enclosed herewith, please find an original and one (1) copy of the Initial Brief of Respondent and the Designation of Matters to be Included in the Record on Appeal. Please file the original in your office and return the filed copy to me in the self-addressed stamped envelope provided for your convenience.

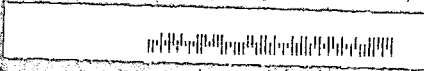
Should you have any question or require further information, please do not hesitate to contact me.

Very truly yours,

Richard L. Patton

Enclosures

cc: Stephen Anderson, Esq. (w/enclosures)



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