

THE STATE OF SOUTH CAROLINA
In The 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.

INITIAL BRIEF OF RESPONDENTS

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SC Court of Appeals

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STATEMENT OF ISSUES ON APPEAL

- I. WHETHER THE COMMISSION CORRECTLY DISMISSED CLAIMANT'S APPEAL AND DENIED HIS MOTION TO REINSTATE?

STATEMENT OF THE CASE

Claimant Courtney Ray Mitchell initiated this claim by filing a Form 50 Request for Hearing on December 23, 2014 alleging he suffered a compensable injury to his psyche/mental health while employed by United Parcel Service (“UPS”) on June 21, 2013. (Form 50, dated Dec. 23, 2014). He filed another Form 50 Request for Hearing on April 12, 2017, and an Amended Form 50 on February 2, 2018, again alleging compensable injury to his mental health but also, and for the first time, alleging a compensable aggravation of his lumbar spine and bilateral carpal tunnel. He sought a finding that his injuries are compensable, and that he is entitled to permanent and total disability and further medical treatment. (Form 50, dated Feb. 2, 2018).

Defendants again timely denied the claim, taking the position that Claimant did not sustain an injury that arose out of and in the course of his employment as alleged. Defendants also asserted that Claimant was out on disability, and not working, at the time of the alleged injury. Therefore, Defendants requested Claimant’s claim and request for benefits be denied in full. (Form 51, dated Feb. 6, 2018).

The parties filed Pre-Hearing Briefs and APA submissions, and were heard by Single Commissioner T. Scott Beck on November 2, 2018. At the hearing, Claimant acknowledged that he was claiming to have reached maximum medical improvement on June 21, 2013, the same date as the alleged injury. (Hr’g Tr. p. 6, lines 10-23). Claimant and his brother Hardy Mitchell, testified on Claimant’s behalf, while Reggie Owens and Sharon Mayes, former and current UPS employees, respectively, testified on behalf of Defendants. The *de bene esse* deposition

testimony of Velma Gina Jones and deposition testimony of other UPS employees was submitted.

Commissioner Beck issued his Decision and Order on February 14, 2019, finding that Claimant failed to meet his burden of proving a compensable aggravation to his back, arms carpal tunnel syndrome and/or psyche. Commissioner Beck also found that, even if Claimant had proven his back or carpal tunnel syndrome were compensable, they were barred by the doctrine of Laches. Finally, Commissioner Beck found that Claimant failed to provide Defendants with timely notice of his claim, had not provided any reasonable excuse for the late notice, and Defendants were prejudiced by Claimant's failure to provide timely notice. (Decision and Order, filed Feb. 14, 2019).

Claimant timely appealed to the Full Commission raising numerous points. (Form 30, dated Feb. 27, 2019). On March 15, 2019, the Commission issued a Form 31 Briefing Schedule and Notice of Appellate Hearing, setting a hearing date of May 20, 2019, with an April 14, 2019 due date for Claimant's appellate brief. (Form 31 Briefing Schedule and Notice of Appellate Hearing, dated March 15, 2019). In a subsequent Form 31, the Commission reset the hearing date for June 17, 2019, with a May 12, 2019 due date for Claimant's appellate brief. (Form 31 Briefing Schedule and Notice of Appellate Hearing, dated April 12, 2019).

On May 23, 2019, the Commission dismissed Claimant's request for Commission review due to his failure to file his brief on the due date. (Administrative Order, dated May 23, 2019). Claimant filed a Motion to Vacate the Order of Dismissal and to Reinstate the Appeal, alleging that he filed and served his Appellant's Brief on May 13, 2019. (Motion to Vacate, dated June 10, 2019) ("Motion"). Respondents opposed the Motion, noting that, although Claimant's Appellate Brief was due on May 13, 2019, since May 12, 2019 was a Sunday, "[n]either 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." Respondents also noted that, although Claimant's Motion referred to a Certificate of Service and an envelope post marked May 13, 2019, "[n]either the certificate of Service nor the envelope were produced as an exhibit to the motion." (Defendants' Reply to Claimant's Motion Reinstate Appeal, dated June 19, 2019) ("Defendants Reply"). On July 15, 2019, the Commission denied Claimant's Motion. (Judicial Conference Decision and Order, filed July 15, 2019). The Commission's Judicial Department confirmed on November 5, 2019 that no Appellant's brief was ever received by the Commission. (Nov. 5, 2019 email from Eugenia Hollmon to Aleigh Gunby, Shayne Williams, and Donald Smith).

Claimant timely appealed to this Court.

BACKGROUND FACTS

As an initial matter, Claimant's Brief of Appellant fails to comply with this Court's Rule 208, SCACR. It does not contain a Table of Contents and Cases, and does not address the proper Standard of Review. It lacks a Statement of the Case and, instead, mixes the procedural history of this case with highly contested factual assertions. As a result, and in order to correct the record before this Court, Respondents are compelled to state far more of the factual background of this case than otherwise would be necessary, given the limited issue on appeal. Clearly, Claimant is hoping to appeal to this Court's sympathies by painting himself as a hapless victim when, in fact, the reality is far more complex.

1. General background information regarding Claimant. _____

At the time of the hearing, Claimant was 45 years old and had a Bachelor of Arts degree from the University of South Carolina Spartanburg in Interdisciplinary Studies. (Hr'g Tr. 8:14-

25) (APA p. 1719). He has been married twice, is currently divorced and has one young son. (Hr'g Tr. 9:3-5) (Cl. Dep. 7:6-25).

With regard to his work history, Claimant testified that he had been a correctional officer for the South Carolina Department of Corrections. He explained that he left that position because he wanted to go where his talents, educational level, training and experience would be capitalized, although apparently he also had some attendance issues. (Hr'g Tr. 40:14-24) (*see also* APA pp. 1728-1731). Claimant also worked for a brief period of time for the Department of Probation and Parole. Claimant was terminated for a purported altercation with another agent. (Hr'g Tr. 41:3-16). (APA pp. 1721-1725). Claimant testified that he also worked for a law firm called Harris, Ragan, & Paterson, but he left following an argument with the lead attorney. (Hr'g Tr. 43:11-18). Claimant then worked for two different landscaping companies in Florida, leaving each after only a few months after getting into arguments with a co-worker at the first job and with the owner on the second job. (Hr'g Tr. 43:19-45:6) (Cl. Dep. 36:25-38:15) (*see also* Cl. Dep. 22:2-38:15, chronicling Claimant's various jobs from 1995 until 2006).

After moving back to South Carolina, Claimant worked for a company called American Security at Easley Baptist Hospital for approximately one year. After giving his two weeks' notice, Claimant got into a disagreement with his boss and quit immediately. (APA pp. 1710-1711). Ultimately, Claimant was placed on trespass notice by that employer. After Claimant was placed on trespass notice, he returned to Easley Baptist and an altercation ensued with an Easley police officer. (Hr'g Tr. 45:10-46:11) (Cl. Dep. 41:23- 43:11). As the result of a later incident involving a handgun that Claimant allegedly left with a cab driver at a bank, (APA pp. 917-922), Claimant was incarcerated and then committed to the Patrick B. Harris Psychiatric Hospital for treatment from July to September 2006. He was diagnosed with bipolar personality

disorder.¹ Upon his release from Patrick B. Harris, he was required to seek outpatient treatment at Abbeville Mental Health.

After completion of the court-ordered one year program at Abbeville Mental Health, Claimant was supposed to stay on his medications. He acknowledged that, even during the treatment period, he was not always compliant with his medication treatment plan. (Hr'g Tr. 46:21-47:18; 48:19-49:5) (Cl. Dep. 44:23-48:4) (APA pp. 910-922, 1149, 1155-1158). Notes from Abbeville Mental Health Clinic, dated September 20, 2006, state that Claimant acknowledged he had become "unreasonably fixated on a hospital supervisor." He "expressed some doubt as to his diagnosis," and did "not feel the need for any services other than medication services." (APA p. 1158).

Claimant also testified that he served in the U.S. National Guard as a military policeman from February 1994 until August of 2006. During his service in the National Guard, he was never part of the regular United States Army, did not serve in any active combat and was never stationed overseas. (Hr'g Tr. 51:4-12) (Cl. Dep. 9:24-11:2).

In 2008, Claimant moved to Kentucky where he worked for a company called Nighthawk Security. That job lasted only about six months because he "had an issue with a girlfriend there," and ended up taking an Alford plea and serving jail time for making terroristic threats. (Hr'g Tr. 49:9-23) (Cl. Dep. 12:5-12; 48:10-49:12) (APA pp. 1736-1737). After returning to South Carolina, Claimant worked several jobs each of which lasted a few months to a year at the longest. (Cl. Dep. 49:21-53:20).

¹ The initial Psychiatric History & Mental Status Exam performed at Patrick B. Harris on July 17, 2006, noted that Claimant stated he was "employed as a military officer but this appears to be delusional." At another point, Claimant stated that he was "a lawyer and a military policy officer." (APA pp. 910-913).

On November 25-26, 2008, Claimant was evaluated at the AnMed Health Emergency Department, having arrived by ambulance complaining of chest pain and anxiety. Medical notes from his assessment indicate that Claimant had been “brought into the Emergency Department by ambulance 11/25/08 after being found at local Hardee’s disoriented per mother; mother states police were called to their home on 11/25/08 and took him to the Anderson County Line.” The notes indicate Claimant had “discontinued his medications with in the last year” and that his behavior had become erratic. His family reported that he had “been labile – goes from crying to singling like a 5 year old to rage; per mother episodes of rage.” His mother reported she “is afraid of him,” and the “[f]amily currently does not feel safe with him; he has left message on his mother’s cell phone that has frightened her – per mother he has periods of rages.” (APA pp. 1284-1292).

2. Claimant’s employment with UPS.

Claimant was hired by UPS on March 30, 2012 as an inside sales representative (“ISR”). Initially, Claimant was in a training group, which is an academy of sorts to help new ISRs learn the job. (Hr’g Tr. 10:17-19; 53:15-18) (Cl. Dep. 53:21-54:14). Claimant moved out of the training group and became a true ISR on or about May 14, 2012. Claimant testified that, when he initially became an ISR, he earned awards for how well his territory was doing. (Hr’g Tr. 13:11-15). However, Claimant later acknowledged the territory that he took over had been operated previously by an employee who had been promoted because her sales were so good. He explained that his job as an ISR was to call on customers within the territory, with the help of outside representatives, to try and obtain more sales and/or keep the sales in the general area. Within a few months of working as an ISR, Claimant began to have health issues that caused him

to go out on disability from October 23, 2012 to October 31, 2012 and again on November 19, 2012 until December 14, 2012. (Hr'g Tr. 54: 3-55:4).

Claimant was evaluated through a quality performance review ("QPR"). (Hr'g Tr. 55:5-8). Claimant was assigned a coach, Velma Jones. Ms. Jones was available to coach anyone within her territories, to provide feedback, to help plan their day and to develop strategies for success. Claimant agreed that he was provided with help, but he stated his belief that it was not very good help. He acknowledged, however, that when he did well, he was given positive encouragement from his supervisors. (Hr'g Tr. 55:15-56:20) (APA pp. 1354-1355, 1358, 1359, 1421, 1460, 1469).

Claimant testified that by mid-year 2013, his production was not where it was supposed to be. As a result, he requested to move to another job, but his request was denied. Claimant was informed that, because he was not meeting the minimum standards on his QPR, he was not able to move to another position within the company. In a May 14, 2013 letter to his supervisor, Michael Battista, Claimant stated, "I just found out yesterday that I have a degenerative condition that will continue to affect my motor skills in my hands to a point where it will be more difficult to operate the computer." (Hr'g Tr. 56:25-57:23) (APA p. 1342). Some six days later, Claimant sent another letter to the HR manager, Reggie Owens, telling him, "I am requesting accommodation with my job due to medical limitations I am experiencing. Last week I found through a medical test that I am losing motor control in my hands and legs. We suspect this is a result of an injury I sustained while serving my country as a military police for the US Army." Claimant later stated that he informed Mr. Owens that he was exposed to an IED while serving in Iraq or Afghanistan. Mr. Owens and a supervisor, Sharon Mayes, helped him file a disability claim. Claimant acknowledged at the hearing that he never served any time overseas

and that he never sustained any service related injuries. (Hr'g Tr. 51:23-52:5; 58:2-59:25) (APA p. 1342, 1343).

Claimant testified that in September of 2012, his health started to deteriorate. He noted that he had a vascular condition that sent him to a cardiologist and later he had a gall bladder attack that required his gall bladder to be removed. (Hr'g Tr. 19:9-18). Claimant explained that the third time he went out on disability, in May or June 2013, it was for his back and hands. Claimant has not worked for UPS since he went out on disability this third and final time. (Hr'g Tr. 9:16-19; 19:18-25; 59: 2-13).

Claimant testified that he felt overwhelmed as an ISR. He felt like he was getting negative responses from his team. (Hr'g Tr. 25:1-26:4). Claimant testified that, by the fourth month of being an ISR, his sales territory was changed and his customers seemed dissatisfied. (Hr'g Tr. 15:2-11). When Claimant's numbers started to decline, it caused him to stress and worry about his job. (Hr'g Tr. 28:3-16). He noted that his supervisor would have him write himself up for failure to produce and/or to meet his QPRs. Claimant testified that he thought he could be fired any day. (Hr'g Tr. 34:6-24).

Claimant believed that his coach, Ms. Jones, was criticizing more than coaching. Nonetheless, Claimant and Ms. Jones shared aspects about their personal lives including insights on children, similar interests, and local ties that they had. Claimant also testified that he trusted Ms. Jones and noted that he had no issues with her and that she was a friend he could talk with in confidence. (Hr'g Tr. 16:18-17:21). However, Claimant stated that he thought Ken Baca, who was in charge of Greenville sales, was demeaning and sarcastic. Claimant did not like Mr. Baca and did not trust him. (Hr'g Tr. 17:22-18:14). Claimant testified that he thought Mr. Battista was a nice man who seemed overwhelmed. (Hr'g Tr. 11:6-7; 18:15-21).

While Claimant was employed at UPS, all of the employees were required to watch a video called Shots Fired. Claimant testified he believed that he had been given the nickname “Shots Fired” after that video was shown. (Hr’g Tr. 26:5-18).

Reginald Owens, the former HR manager for inside sales at the Greenville site of UPS who retired in August of 2018, was involved in various personnel matters for UPS. (Hr’g Tr. 83:2-84:1). Mr. Owens testified that, once Claimant was hired, he came to Mr. Owens’ attention because of attendance issues. (Hr’g Tr. 84:14-23). As a result of an inquiry, Mr. Owens had a meeting with Claimant to determine what the problems were and to help identify ways to help him. When Claimant informed Mr. Owens that he was having medical issues that were contributing to his absenteeism, Mr. Owens helped Claimant apply for and receive disability benefits. Initially, Claimant reported heart issues. Later, he told Mr. Owens that he was having problems with his legs and hands that he attributed to an IED he stepped on while in Afghanistan. Claimant told Mr. Owens that he was going to lose feeling in both of his legs and hands because of the IED exposure. (Hr’g Tr. 85:2-86:9; 86:24-87:3) (Owens Dep. 13:11-18; 16:13-22). Mr. Owens noted that Claimant never filled out any paperwork related to a work accident, and never reported a work accident. To the contrary, because Claimant reported his physical issues were unrelated to work, Mr. Owens helped Claimant complete disability paperwork. (Hr’g Tr. 87:4-24; 88:22-89:6).

Mr. Owens acknowledged that, while Claimant was still employed with UPS, Claimant reached out to him to discuss the possibility of moving to a different position within the organization. Mr. Owens informed Claimant that he could not move to a different position because he was not meeting the minimum performance requirements of his current position at

that time. In order for an employee to move from one position to another, UPS requires that the employee be proficient at their current job. (Hr'g Tr. 87:25-88:21).

Mr. Owens testified that a video entitled "Shots Fired" was shown to all employees in the Greenville ISR office. He explained that the purpose of showing the video was a corporate decision made to help prepare employees for an active shooter situation, due to what was going on in the world at the time. Mr. Owens testified that Claimant never complained to him about having to watch the video and never reported at any time that any co-employee was calling him names at work. In fact, Mr. Owens testified that, if an employee reported a name calling or teasing situation, an investigation would be undertaken immediately and steps would be taken to stop that activity. (Hr'g Tr. 90:1-22).

Sharon Mayes managed Claimant as an ISR. (Hr'g Tr. 106:10-23). Ms. Mayes stated that Claimant did not meet the minimum expectations of an ISR, so they quickly assigned a coach to help him. The coach's job was to help plan his sales acumen, to answer his questions, and to make sure there was a smooth transition from training to becoming a full ISR. Ms. Mayes noted that it is not unusual for an ISR to have a coach. (Hr'g Tr. 107:8-25). Ms. Mayes explained that, when Claimant initially took over his patch, he received some accolades based on sales made by a prior ISR who had excelled and from whom he inherited the territory. (Hr'g Tr. 108:11-25) (Mayes Dep. 12:13-24). Ms. Mayes noted that, toward the end of his tenure with UPS, Claimant asked to be transferred from the ISR position back to the associate/training ISR group because of medical issues; however, that is a temporary position, not a permanent position. (Hr'g Tr. 109:4-110:15) (Mayes Dep. 20:4-17; 21:23-22:16). She testified that Claimant also requested to be transferred to security, but there was not a security position available and, in addition, Claimant was unable to transfer within the company because he was not meeting the

minimum requirements of the job that he held at the time. (Hr'g Tr. 110:16-23) (Mayes Dep. 21:15-22). Claimant informed Ms. Mayes that "he was in the services, armed services and he had gotten blown up by and IED explosive device." (Hr'g Tr. 113:2-17).

The testimony of Velma Gina Jones was taken by *de benne esse* deposition on April 13, 2018. Ms. Jones testified that she was Claimant's coach during his tenure with UPS. Her job as a team lead was to help get new ISRs up to speed by training them, identifying problems and helping them focus on the requirements of the job. Ms. Jones was not a supervisor and had no role in hiring, firing, or disciplining. (Jones Dep. 6:14-25; *see also* 17:2-18 (reiterating that she was a coach, not a supervisor, and that there were many supervisors and managers that any employee could reach out to for help for any reason)). (Jones Dep. 7:12-8:17). Ms. Jones explained that, while training Claimant, the two of them would discuss where there was room for improvement, set new goals, and then work to achieve those goals. Per Ms. Jones, Claimant was appreciative of the coaching and their coaching sessions always ended on happy, positive notes. Even with coaching, however, Claimant showed very little to minimal progress. (Jones Dep. 12:7-13:18).

Ms. Jones and Claimant were close enough to talk about personal issues at work. Although Claimant did not tell her about any hand or back problems that he related to his work with UPS, Claimant did tell Ms. Jones he had been "blown up" while in Afghanistan and had suffered injuries. She and Claimant as well as other employees attended group lunches and, in addition, Ms. Jones had attended a barbeque at Claimant's mother's house with her young son. (Jones Dep. 14:25-16:23).

3. The June 21, 2013 Lunch.

Claimant testified that, on June 21, 2013, while he was out on disability, he went to lunch with several UPS employees. (Hr'g Tr. 29:11-30:15; 61:11-19) (Cl. Dep. 86:6-25). During this lunch, Claimant made statements to his co-workers that they interpreted as threatening. The police later showed up at his house to investigate. (Hr'g Tr. 62:20-63:1). Somewhere around June 28, 2013, Claimant was admitted to Three Rivers Behavioral Health. (Hr'g Tr. 31:13-19) (Cl. Dep. 72:13-24; 88:19-89:23).

Ms. Jones testified that, on June 21, 2013, while Claimant was out of work on disability, she and other coworkers went to lunch with Claimant at a local restaurant. After that luncheon, Ms. Jones never spoke with Claimant again. (Jones Dep. 18:11-21). Ms. Jones noted that, as a result of the luncheon and subsequent events, she was asked to provide a statement for police and ultimately to testify in criminal proceedings against Claimant for the threats that were made against her. In earlier testimony, Ms. Jones described Claimant's demeanor at the June 21, 2013 luncheon, stating that Claimant began the conversation by talking about being upset at work and calling one of his co-workers who was at the luncheon a derogatory name, characterizing him as an "Arab or something, just put a turban on him and call him Samir and he could be a New York taxi driver." Claimant began to get louder and louder at the table, causing customers at nearby tables to move away from them. Claimant then started talking about a new sniper rifle and armor piercing bullets that he had obtained. Claimant described his supervisor, Mr. Battista, as "shit," said he would "take care of him" and made comments about "watching the news." Claimant then stated, "you know my purpose, my main drive, my focus, my...fixation is to have Ken Baca removed from that place in a box – I mean, with his stuff beside me in a box." Claimant talked about Ms. Mayes, calling her "Sister Madea." Claimant then got up from the table, threw some

money on the table, and left. Because they were disturbed by the lunch conversation, in particular by the statements made about Mr. Baca, the references to guns and bullets and the military, Ms. Jones and the other employees in attendance at the luncheon went to Mr. Owens to report Claimant's actions and statements. (APA pp. 333-338) (*see also* APA pp. 1509-1510).

The Depositions of Donald Louis Canady (APA pp. 156-181), Scott Brown (APA pp. 142-153), Michael Leonard (APA pp. 267-318), and Dwight Inman, (APA pp. 184-199), were entered into evidence. These Depositions, along with Mr. Brown's, Mr. Leonard's and Mr. Inman's personal statements following the lunch, (APA pp. 1502-1508, 1516-1517), provide cumulative and corroborative evidence regarding the events that took place at the luncheon on June 21, 2013. During that luncheon, Claimant talked about obtaining a military sniper rifle with armor piercing bullets. He also mentioned that he wanted his supervisor, Mr. Baca, to go out in a box and then corrected himself by stating that he was going to help Mr. Baca carry his stuff out in a box.

Mr. Baca provided a statement concerning how the June 21, 2013 lunch affected him, stating that, on that date, his "personal and professional life changed." Mr. Baca expressed concern for his own safety as well as for that of his family and the "approximately 254 employees" at the UPS facility. Text messages sent to UPS employees and the package later delivered to the UPS offices only served to heighten Mr. Baca's fears and concerns. (APA pp. 1518-1520).

While Ms. Mayes was not at the June 21, 2013 luncheon, she saw the group of employee attendees returning from the lunch. She noticed something appeared to be wrong so she asked if they were okay. (Hr'g Tr. 117:14-24). Ms. Mayes testified that she did not understand Claimant's actions and comments at the lunch because all they were trying to do was to help

him. She felt horrified by the comments that apparently were made at the luncheon. (Hr'g Tr. 118:5-17).²

4. Subsequent Events.

Donald Canady, who was the security manager for UPS for the South Carolina area of the South Atlantic District in 2013, (Canady Dep. 6:19-23), noted that he had become aware of Claimant on the day of the July 21, 2013 lunch. (Canady Dep. 9:7-11). Mr. Canady understood Claimant had threatened a supervisor and made statements regarding a new sniper rifle and armor piercing bullets. (Canady Dep. 12:6-19; 14:12-21). In response to this information, Mr. Canady contacted local law enforcement in Anderson in order “to determine if the threat was credible, or not.” (Canady Dep. 13:6-14:9). After the police contacted him, Claimant called Mr. Canady very upset, but then hung up on him. (Canady Dep. 15:1-21). Initially after a “knock and talk,” the Anderson police officer who interviewed Claimant indicated there was no viable threat. However, on the following Monday, the officer contacted Mr. Canady and advised that they should take all precautionary measures immediately in order to take care of UPS employees, that there was a viable threat, and that Claimant was dangerous. (Canady Dep. 17:27-15; 18:14-18; 21:1-6). At that point, Mr. Canady arranged to have officers around the clock at the Greenville UPS facility. (Canady Dep. 18:22-19:4).

Approximately a week after Claimant was released from Three Rivers Behavioral Health, Ms. Jones and Mr. Battista received text messages they perceived as threatening. (APA pp. 1520, 1536, 1539-1544). Later that morning, on July 26, 2013, a leaf blower that another employee, Darryl Bailey, had loaned to Claimant was returned to the UPS office along with an envelope. Mr. Bailey was instructed to deliver the envelope to Ms. Jones immediately. Ms.

² Ms. Mayes emailed Mr. Owens on July 30, 2013 expressing her concerns that Claimant may “retaliate against me and the staff here.” (APA p. 1521).

Jones and Mr. Bailey opened the package, which contained trespass notices for Dwight Inman and Ken Baca, an old concealed weapons permit belonging to Claimant, three cell phones (two of which were “powered down”), two pieces of notepad paper, one from a hunting club, a receipt from a 7-Eleven, and a business card for a tree nursery in Anderson. Ms. Jones was particularly struck by the concealed weapons permit. After reviewing the receipt from the 7-Eleven further, Ms. Jones realized that the 7-Eleven was near her mother’s house. Ms. Jones understood these items to be a message that Claimant knew where her mother lived and that he had a gun. Ms. Jones explained that she was frightened by Claimant. (APA pp. 338-343) (*see also* APA pp. 1511-1515; 1527-1534) (Hr’g Tr. 63:7-25) (Cl. Dep. 103:17-104:3).

Mr. Owens also felt personally threatened by Claimant’s actions and words. (Hr’g Tr. 92:17-19). Mr. Owens noted that he had worked for UPS for 41 years prior to that event and that, with his knowledge of Claimant’s military background and the things Claimant purportedly had done, he felt Claimant was very capable of hurting him and other employees. (Hr’g Tr. 92:20-93:10; 100:3-9).³ Mr. Owens testified that, after the package was delivered, UPS spent hundreds of thousands of dollars for additional security in light of Claimant’s actions. (Hr’g Tr. 93:14-94:2).

Claimant was arrested, tried, and ultimately convicted of intimidating and threatening a witness, Ms. Jones. In fact, at the time of the hearing, Claimant was serving ten years in prison for that conviction. (Hr’g Tr. 64:1-6). Claimant’s employment with UPS was terminated on August 16, 2013 for misconduct. (APA p. 1361).

³ Mr. Owens also provided a statement concerning the reports by Ms. Jones, Mr. Brown, Mr. Leonard and Mr. Inman following the June 21, 2013 lunch, and the concerns and fears raised by the package Claimant sent to UPS in July. (APA pp. 1522-1524).

During his incarceration for witness intimidation, Claimant lost his privileges on more than one occasion. In October of 2015, Claimant threw hot coffee on a guard and hit him in the face. (Hr’g Tr. 65:15-24) (Cl. Dep. 12:16-13:2).

STANDARD OF REVIEW

Judicial review of a Commission decision is directed by the substantial evidence rule of the Administrative Procedures Act, S.C. Code Ann. § 1-23-380(5) (Supp. 2013). Lark v. Bi-Lo, Inc., 276 S.C. 130, 276 S.E.2d 304 (1981). A reviewing court should affirm the decision of the Full Commission unless it is clearly erroneous in view of the substantial evidence of the whole record. Lark, 276 S.C. at 136, 276 S.E.2d at 307. The reviewing court may not substitute its own judgment for that of the Full Commission as to the weight of the evidence on a question of fact, but may reverse if the decision is affected by an error of law. S.C. Code Ann. § 1-23-380(5).

ARGUMENTS

I. The Commission correctly dismissed Claimant’s appeal and denied his motion to reinstate.

The Commission properly dismissed Claimant’s appeal because he failed to file his appellate brief as required by Reg. 67-704 and the Form 31, Notice of Review, and did not seek an extension of time in which to do so. The Commission is authorized to promulgate regulations setting procedures for contested claims and to respond to parties who fail to comply with those procedures. To date, Claimant has never filed a Full Commission appellate brief with the Commission, (Nov. 5, 2019 email from Eugenia Hollmon to Aleigh Gunby, Shayne Williams, and Donald Smith.), nor served one on Respondents. (Defendant’s Reply).

Section 42-3-30 of the South Carolina Workers’ Compensation Act (“Act”) directs the Commission to “promulgate all regulations relating to the administration of the workers’

compensation laws of this State necessary to implement the provisions of this title and consistent therewith.” S.C. Code Ann. § 42-3-30. In other words, the Commission “is empowered ... to issue regulations governing the administration of awards.” James v. Anne’s, Inc., 390 S.C. 188, 201, 701 S.E.2d 730, 736 (2010). Furthermore, the Commission’s rules and regulations “have the force and effect of law if reasonable and not inconsistent with pertinent statutory provisions.” Id., 390 S.C. at 201, 701 S.E.2d at 737; *see also* Glover by Cauthen v. Suitt Constr. Co., 318 S.C. 465, 469, 458 S.E.2d 535, 537 (1995) (“[r]egulations authorized by the legislature have the force of law”). Judicial and quasi-judicial tribunals “necessarily exercise[] wide discretion in managing a case,” and “[e]very reasonable presumption in favor of a proper exercise of the trial court’s discretion will be made.” Trotter v. Trane Coil Fac., 393 S.C. 637, 650, 714 S.E.2d 289, 295 (2011). The “Commission is a *quasi* judicial board and as such is vested with a wide discretion in procedural matters.” Gurley v. Mills Mill, 225 S.C. 46, 51, 80 S.E.2d 745, 747 (1954).

The Commission has promulgated regulations governing the adjudication of claims including, specifically, appeals to the Full Commission from a Single or Hearing Commissioner’s decision. Reg. 67-704 provides, in pertinent part, that the Commission will serve the parties with a Form 31, Notice of Review, at least thirty days before the date of the review hearing. “The appellant’s brief *must be filed* with the Commission according to R.67-205 and R.67-705 on or before the date stated on the Form 31.” S.C. Code Reg. § 67-704(A)(2) (emphasis added); *see also* S.C. Code Reg. § 67-704(D) (same filing requirement imposed on appellants in “standby” cases and cases set for resolution without oral argument). Reg. 67-705, in turn, provides that, “[o]n each case appealed to the Commission for review, the appellant *shall* file a brief that includes a statement of the case, questions presented, arguments, and

conclusion.” S.C. Code Reg. § 67-705(A). In addition, “[t]he appellant *shall file* the brief and proof of service on the opposing party with the Commission’s Judicial Department according to R.67-20 *on or before the date on the Form 31.*” S.C. Code Reg. § 67-705(B) (emphasis added). The briefs must be served pursuant to Reg. 67-211. S.C. Code Reg. § 67-705(G). An appellant may seek an extension of time to file a brief with the consent of the opposing party so long as “a letter acknowledging the agreement is filed with the Commission on or before the original filing date.” S.C. Code Reg. § 67-705(H). However, “[i]f 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.” S.C. Code Reg. § 67-705(H)(3).

Here, Claimant did not file his appellate brief to the Full Commission on time and did not seek an extension of time in which to do so. Moreover, and contrary to his assertions to this Court, he *never* has filed an appellate brief with the Full Commission and he *never* has served one on Respondents. (See Nov. 5, 2019 email from Eugenia Hollmon to Aleigh Gunby, Shayne Williams, and Donald Smith) (Defendant’s Reply). As a result, Claimant’s sole argument on appeal – that his appeal to the Full Commission was dismissed because he filed his brief on May 13, 2019 instead of May 12, 2019 – simply does not hold water. His appeal to the Full Commission was *not* dismissed because he failed to file a brief on Sunday, May 12, 2019 but because he did not *ever* file (or serve) any appellate brief with the Full Commission.

Contrary to Claimant’s argument on appeal, Respondents did raise below the argument that they were never served with his appellate brief to the Full Commission. Specifically, in their Defendants’ Reply, they stated that “[n]either 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.” In addition, Respondents pointed out that, although Claimant’s Motion referred to a Certificate of Service and an envelope post marked May 13, 2019, “[n]either the certificate of Service nor the envelope were produced as an exhibit to the motion.” Thus, this argument was clearly raised to the Commission. Furthermore, Respondents are not bound to the arguments made below but, instead, may raise any additional sustaining grounds on appeal. *See, e.g., Jones v. Lott*, 387 S.C. 339, 346, 692 S.E.2d 900, 904 (2010) (a “respondent ‘may raise on appeal any additional reasons the appellate court should affirm the lower court’s ruling, regardless of whether those reasons have been presented to or ruled on by the lower court’”).

Claimant also appeals the denial of his motion to reinstate his appeal. An appeal that has been administratively dismissed may, within the Commission’s discretion, be reinstated for good cause. S.C. Code Reg. § 67-705(H)(4); *see also Matute v. Palmetto Health Baptist*, 391 S.C. 291, 296, 705 S.E.2d 472, 475-474 (Ct. App. 2011) (the Commission exercises its discretion in determining whether to reinstate an appeal that has been dismissed).⁴ However, Claimant did not even attempt to argue to the Full Commission that he had good cause for not filing his appellant’s brief by the deadline set forth in the Form 31 or seeking an extension of time in which to do so. For that reason alone, the Commission’s denial should be upheld. The use of the term “may” indicates that the Commission exercises its discretion under S.C. Code Reg. § 67-705(H)(4). *See also Matute*, 391 S.C. at 296, 705 S.E.2d at 475-474. Indisputably, where a party fails to even attempt to show good cause, the Commission is well within its discretionary authority to deny a request to reinstate.

⁴ The standard of review for a lower tribunal’s determination of whether good cause exists is the lenient abuse of discretion standard. *See Richardson v. P.V., Inc.*, 383 S.C. 610, 614, 682 S.E.2d 263, 265 (2009).

On appeal, Claimant continues to argue, without any evidentiary support, that he did in fact file a timely brief. While Respondents do not contest that his brief was due on May 13, 2019, instead of Sunday, May 12, 2019, he neither filed nor served a Full Commission brief on May 13, 2019, or any time thereafter. (*See* Nov. 5, 2019 email from Eugenia Hollmon to Aleigh Gunby, Shayne Williams, and Donald Smith) (Defendant’s Reply). In fact, Respondents wrote to Claimant’s counsel on January 14, 2020, copying this Court, requesting a copy of his purported brief that he claims he filed with the Commission. As of the date Respondents filed their initial brief, (February 12, 2020), no response has been received from Claimant’s counsel. As a result, and assuming he produces a “brief” as part of the Record on Appeal in this case, which Respondents maintain is improper since Claimant never submitted it to the Commission,⁵ the first time Respondents will have seen Claimant’s Full Commission brief will be when he produces the Record on Appeal.

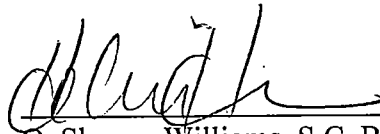
⁵ “The Record on Appeal shall not ... include matter which was not presented to the lower court or tribunal.” Rule 210(c), SCACR.

CONCLUSION

For all the reasons stated herein, this Court should affirm the Commission's dismissal of Claimant's appeal to the Full Commission and its subsequent denial of his motion to reinstate.

February 12, 2020

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*Attorneys for Respondents United Parcel Service and
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FEB 14 2020
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

W.C.C. File No.: 1322347

Courtney Ray Mitchell, Employee,Appellant,

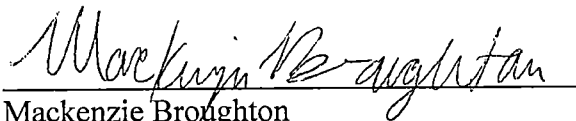
v.

United Parcel Service, Employer, and
Liberty Mutual, Carrier, Respondents.

PROOF OF SERVICE

I certify that on the 12th day of February 2020, I served the **Initial Brief of Respondents** United Parcel Service and Liberty Mutual and Respondents' **Designation of Matter to be Included in the Record on Appeal** 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*



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Reply To

HELEN F. HISER
Direct Dial: (843) 576-2930
helen.hiser@mgclaw.com

February 12, 2020

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FEB 14 2020

SC Court of Appeals

Via U.S. Mail

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

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 for filing please find the following documents:

1. the original and one copy of the Initial Brief of Respondents United Parcel Service and Liberty Mutual;
2. the original and one copy of Respondents' Designation of Matter to be Included in the Record on Appeal; and
3. the original and one copy of Respondents' Proof of Service concerning items one and two.

Please file these documents and return the clocked-in copies 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.

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SC Court of Appeals

2095.15004/HFH/mtb
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