

STATE OF SOUTH CAROLINA
In the Court of Appeal

APPEAL FROM THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

T. Scott Beck, Commissioner

SCWCC File No. 1619767

Appellate Case No. 2018-001111

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SC Court of Appeals

Veronica Rodriguez, Employee.....Respondent,
v.
Peggy Evers, Employer and NorGuard Insurance Company, Carrier.....Appellants .

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA, COUNTY OF CHARLESTON
BEFORE THE WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NUMBER: 1619767

VERONICA RODRIGUEZ,)
)
 Claimant/Employee,)
)
 vs.)
)
 PEGGY EVERS,)
)
 Employer,)
)
 and,)
)
 NORGUARD INS. CO.,)
)
 Carrier/Defendants.)
 _____)

DECISION AND ORDER

HEARING:

**HELD IN GEORGETOWN COURTHOUSE ON
NOVEMBER 3, 2017**

APPEARANCES:

**DON C. GIBSON, ESQUIRE, ON
BEHALF OF CLAIMANT**

**ROBERT E. HORNER OF SPEED, SETA,
MARTIN, TRIVETT & STUBLEY, LLC.,
ON BEHALF OF DEFENDANTS PEGGY
EVERS AND NORGUARD INS. CO.**

PURPOSES OF HEARING:

**TO DETERMINE ISSUES SET FORTH
IN FORMS 50 AND 51**

HEARING COMMISSIONER:

COMMISSIONER MIKE CAMPBELL

ORDER FILED:

January 5, 2018

APA SUBMISSIONS

Pursuant to the South Carolina Administrative Procedures Act and Regulation of the South Carolina Workers' Compensation Commission the following records and documents were submitted into evidence.

The Claimant submitted the following records and exhibits into evidence:

ITEM #	PROVIDER	DATE(S)	# OF PAGES	PAGE #
1.	Accident location/site 65 Ocean Point Dr. Isle of Palms, SC 29541~ Photo	n/a	1	1
2.	South Carolina Secretary of State Business name search 1. Peggy Evers 2. Cleaner Concepts, 3. Cleaner Concepts of Charleston No Records Found	2017	3	2-4
3.	South Carolina Department of labor, Licensing and Regulations No Records Found	2017	2	5-6
4.	South Carolina Workers Compensation Insurance Coverage inquiry.	2017	3	7-9
5.	Insurance ~ 1. Optum WC Prescription Card for Claimant's medications 2. Berkshire Hathaway Ins. Co. Claim Acknowledgment	12/30/2016 12/30/2016 01/05/2017	 4	10 10A to C
6.	Letter from Employer Cleaner Concepts Re: Employment & Wage July 25, 2016 Lease agreement	7/25/2016 9/1/2016	1	11 11A-C
7.	Letter from Employer Cleaner Concepts Re: Employment & Wage January , 2017	01/05/2017	1	12
8.	Payroll Checks from Cleaner Concepts to Claimant	3/29/2016 to 12/14/2016	15	13-28
9.	Photos – Medical Knee Menisci ~ Torn Horn Spine L5-Sacrum ~ Cervical Spine C1 to C5	n/a	3	29-31

10.	Health First Jeff Anderson MD, Sarah Silvis MD and Benjamin Yoo MD	12/05/2016 to 02/23/2017	12	32-44
11.	Tri-County Diagnostic Imaging MRI Right knee MRI Lumbar MRI Lumbar (second) w/Addendum	01/06/2017 02/21/2017 02/27/2017	1 1 3	45-49
12.	Photo of Knee after and before	12/10/2016	2	50-51
13.	Referral to Lowcountry Orthopedic Referral to Southeastern Spine	01/11/2017 02/23/2017	2	52-53
14.	Deposition of Veronica Rodriguez	05/19/2017	34	54-87
15.	Form 27 Peggy Avers: for appearance at hearing	09/20/2017	4	88-91
16.	Unanswered Form 27 amended Peggy Evers and NorGuard Insurance Co a/k/s Guard Insurance group. <i>Claimant reserves the right to amend</i>	09/27/2017	4	92-95
17.	Unanswered Form 27 NorGuard Insurance Co a/k/s Guard Insurance group. <i>Claimant reserves the right to amend</i>	09/27/2017	4	96-99
18.	Expenses of Work Accident for Claimant	12/05/2016 to Current	4	100-104
19.	Prescription Medication given to Claimant from the defendant	December 2016	2	105-106

The Defendants submitted the following records and exhibits into evidence.

1.	Payment records			1-35
19.	Veros Cleaning Business Card			36

STIPULATIONS

Counsel for the parties at the hearing stipulated as follows:

1. Venue is proper in Georgetown County by agreement of the parties.
2. Notice of the hearing was timely and properly served on all parties.
3. The purpose of the hearing is to determine the issues as set forth on the Form 50 and Form 51 filed by the parties.
4. That the accident giving rise to this claim occurred December 5, 2016.
5. All other issues, including jurisdiction, are in dispute for determination by the undersigned hearing officer.

STATEMENT OF THE CASE

On December 5, 2016, Ms. Veronica Rodriguez, a self-employed house cleaner (cleaning lady), was working for Peggy Evers owner of Cleaner Concepts and cleaning a large two (2) story home located at 65 Ocean Point Drive, Isle of Palms, South Carolina 29451(Clt APA, Page 1). Peggy Evers' sister Molly was her supervisor and inspector of her work at this job site. She was carrying soiled linens down the stairs leading off the front porch of the house when she fell down the front steps injuring her right knee, back and neck. Ms. Rodriguez contacted her supervisor Molly Aribé (sic?) and reported the accident. Ms. Rodriguez was told by Molly to wait for her arrival as she was inspecting other houses. However, not hearing from Molly after a delay of some thirty (30) minutes or so, Veronica once again she called her supervisor Molly who then told her to meet her at the Mt. Pleasant office where a medical consult was discussed. At the office Ms. Rodriguez was given permission by her supervisor Molly to go to a doctor of her choice

Claimant selected HealthFirst to evaluate and treat her for her injuries. Claimant immediately drove to HealthFirst. When she arrived at HealthFirst they contacted her employer who gave approval for medical treatment. The Employer spoke with her often over the next several days as she monitored her progress and encouraged her to return to work as soon as possible. The employer's workers compensation insurance carrier initially monitored and approved her care. The carrier approved x-rays and MRIs for her right knee and back. The carrier even provided her with an Optum Prescription card for her prescriptions. However, shortly after the troubling MRI results were received by the workers compensation carrier and Peggy Evers/Cleaner Concepts, the carrier denied coverage and refused to authorize further medical care for the injured worker. No TTD or TPD Compensation has been received by the claimant since the accident. Ms. Rodriguez is the sole provider for her three children and has received no income or work from Peggy Evers of Cleaner Concepts since January 18, 2017 when she last received a pay check for the limited time she had worked.

This matter came before the Commission pursuant to the parties' Form 50 and 51. The Defendants deny compensability alleging that Ms. Rodriguez does not meet the requirements to be an employee and is, rather, an independent contractor not covered by the Act. Based on the evidence produced in this case and now part of the file, the Claimant asserts while working for Peggy Evers/Cleaner Concepts she was a solitary working subcontractor of the owner/employer Peggy Evers/Cleaner pursuant to §42-1-400 and the case law related thereto. Further, that the Owner/employer Peggy Evers/Cleaner Concepts deducted worker compensation insurance premiums from each of the Claimant's pay checks during her period of employment. Peggy Evers/Cleaner Concepts testified she also deducted workers compensation insurance premium contributions from all of her subcontractors similarly situated as Ms Rodriguez. The carrier is now denying coverage for the workers compensation insurance even though all premiums were paid twice each month by involuntary deduction from Claimant's pay check. Peggy Evers/Cleaner Concepts testified her primary business for over 30 years has been cleaning (Ht 62, Inn11-25) houses. The Claimant did work exclusively as a cleaning self-employed solitary subcontractor and worked full time for Peggy Evers/Cleaner Concepts from approximately August 15, 2015 until her job-related injury December 5, 2016. The nature of the work of both the owner and the subcontractor is the cleaning business provided to homeowners and on occasion offices. The nature of the cleaning business was the same and they were inextricably connected. The work activity of the subcontractor Veronica Rodriguez is (1) an important part of the owner Peggy Evers/Cleaner Concepts's business; (2) is necessary, essential, and integral part of the owner's business; or (3) the identical activity performed by the employees of the owner. If any of these three tests are satisfied, the injured worker is considered a subcontractor.

FINDINGS AND DIRECTIVES

Based on the Commission file, the APA submissions of the parties, financial records (Exhibit 1 in evidence) and the testimony presented by the parties at the hearing, I make the following findings of fact based on a preponderance of the evidence submitted by the Claimant:

1. Claimant alleges she sustained injuries to her right knee, neck and back arising out of and in the course and scope of her employment on 12/05/2017. The testimony of the Claimant reflects she fell down the front stairs of a home suffering injuries to her right knee, spine and neck. Claimant promptly reported the job-related accident to her supervisor Molly and arranged with her employer's consent to go to HealthFirst for medical care. The HealthFirst Medical Records Summary set forth above includes the MRIs which show a torn meniscus in the right knee as well as irregularities in the back prompting HealthFirst to refer the Claimant to orthopaedic specialists to further evaluate the MRIs. She further was placed on restricted duty by the attending medical doctors at HealthFirst as discussed above previously. After the problems emerged with the MRIs, the carrier defendant promptly took steps to deny the claim. By a preponderance of the evidence I find that the Claimant fell at her job-site and suffered injuries that are causally related to her fall on the steps and arose out of her work for the defendant. Even though the Claimant was placed on restrictions by the doctors at HealthFirst, there was no written evidence she was ever offered light duty. The Claimant has not received any paychecks or offers of work from the Defendant since January 18, 2017.

2. Defendants deny the employee-employer relationship existed and allege the Claimant was an independent contractor/sub-contractor for the Employer. I find the Claimant is a sub-contractor pursuant to § 42-1-400 of the Act. The determination of whether an injured person is an employee or an independent contractor is based on the contractual nature of the relationship and not on the nature of the work performed. South Carolina recognizes four factors bearing on this relationship. In *Farrar v. D.W. Daniel High School*. These factors are: (1) the employer's right to exercise or the actual exercise of control over the details of the work and how it is performed; (2) the method of payment; (3) who furnishes the equipment; and (4) the employer's right to terminate the employment. It appears that the defendant's efforts were focused largely on this analysis to demonstrate the Claimant was an independent contractor/subcontractor with the objective of denying jurisdiction.

To the contrary, based on the evidence presented in this, case I determine that the Claimant Veronica Rodriguez is a subcontractor and statutory employee pursuant to S.C. Code Ann. §42-1-400. Under § 42-1-200 of the ACT it is necessary to determine whether the work performed by a subcontractor is a part of the owner's business under the following three (3) prong test: this hearing officer must consider whether (1) the activity of the subcontractor is an important part of the owner's trade or business; (2) the activity performed by the subcontractor is a necessary, essential, and integral part of the owner's business; or (3) the identical activity performed by the subcontractor has been performed by employees of the owner.

"If any one of these tests is satisfied, the injured worker is considered the statutory employee/sub-contractor of the owner." Fortner Case cited above. "Thus, the concept of statutory employment provides an exception to the general rule that coverage under the WCA requires the existence of an employer-employee relationship." Fortner Case, 402 S.C.at 432. "It is South Carolina's policy to resolve jurisdictional doubts in favor of the inclusion of employers and employees under the Workers' Compensation Act."

Upon review of the evidence and based on a preponderance of the evidence submitted, I find that the activity of the Claimant subcontractor is an important part of the owner's trade or business. I also determine that the activity performed by the subcontractor cleaning lady is a necessary, essential, and integral part of the owner's trade or business. The nature of their business is that of contract cleaners of houses.

I find that the Claimant is a subcontractor pursuant to § 42-1-400 of the Act. Peggy Evers/Cleaner Concepts is a statutory employer pursuant to the same statute.

3. Claimant has undergone various medical evaluations and medical treatments for her alleged work-related injuries summarized as follows:
 - a. Medical care with HealthFirst- initially approved day of accident 12/5/2016 by telephone agreement with Claimant supervisor Molly. HealthFirst did an evaluation

of her injuries to her right knee, mid back, and lower back pain. An X-ray was performed on her spine and her knee. The attending physician Dr. Benjamin Yoo assigned Claimant the following restrictions: light duty and no lifting for 1 week, with a follow up appointment within seven (7) days (Clt#10, pp.32-35). On December 12, 2016, Ms. Rodriguez returned to HealthFirst with continued pain and headaches. Claimant was given restrictions as follows: no prolonged standing or walking. No lifting any greater than 10 pounds and referral for an MRI/ right knee (Clt.#10, pp.36-38).

- b. A **right knee MRI** w/o contrast was requested by Gaston Machado Jr, MD from Tri-County Radiology on January 6, 2017. The MRI report (Clt#11, pp.45) reflected: (1) moderate joint effusion,(water around the knee) (2) a tear involving the posterior horn of the medial meniscus, and (3) area of moderate chondromalacia involving the lateral femoral condyle(breakdown/ deterioration of the cartilage). Ms. Rodriguez returned to Health First on January 11, 2017 and was seen by Sarah Silvis, PA. She was evaluated and given work restriction: no prolonged walking or standing. Ms. Rodriguez was also **referred** to Low Country Orthopedics for exam and treatment of her knee injury and review of her MRI (Clt#13, pp.52).
 - c. A **lumbar MRI** w/o contrast was requested by HealthFirst,Jeffrey S Anderson, MD from Tri-County Radiology on February 21, 2017(Clt#11,pp.46) revealed that Ms. Rodriguez had a mild degenerative disc disease and facet arthropathy most pronounced in the L5-S1 region. There was no severe central or exit narrowing. There was considerable motion on the axial T1 weighted MRI images, and it was decided that the patient was to return and repeat the axial T1 weighted MRI images. Dr. Anderson of Healthfirst also requested additional MRI for additional images. Upon repeat of the lumbar MRI the appearance was unchanged (Clt#11, p.47). On 2/23/2017 Healthfirst Dr. Jeff Anderson referred Claimant to Southeastern Spine Institute for an evaluation (Clt#13, p.53).
 - d. Ms. Rodriguez last returned to HealthFirst on February 23, 2017. After medical evaluation by Dr. Jeff Anderson she was given the following work restrictions: no lifting greater than 5 lbs., no bending or stooping, no climbing stairs, and no prolonged standing or walking (Clt#10, p.43). Dr. Anderson **referred** Ms. Rodriguez to Southeastern Spine (Clt#13, p.53) and instructed her to return to Health First in two weeks to follow up due to her lack of pain relief.
4. On 11/03/2017, at the hearing before the undersigned single Commissioner, the Claimant testified regarding her alleged work-related accident, her working arrangement with the Employer and about her compensation. In addition, the Claimant testified that the Employer deducted a portion of wages paid to the Claimant for workers' compensation insurance premiums. She testified as follows:

TESTIMONY OF VERONICA RODRIGUEZ

- a. During the time she worked for Peggy Evers/Cleaner Concepts she was a sole, self-employed physical laborer/subcontractor hired to do house cleaning. Veronica Rodriguez was employed by Peggy Evers/Cleaner Concepts to do everything related to cleaning of homes (Ht, 14, lns 1-2)/. She further testified that her equipment consisting of brooms, mops, vacuum cleaners and ladders all of which were provided by Peggy Evers/Cleaner Concepts (Ht 14, lns 4-19).
- b. Claimant testified she was required to meet every Monday morning at the offices of employer Peggy Evers/Cleaner Concepts, where she would get her weekly job, assignments and instructions for the week from Peggy, Molly, or Mara. (Ht 16, lln 5-7). Each work day of the week she, as well as all the other cleaning ladies and subcontractors/workers, would meet at 9:00a.m. each morning (Ht 17, lnn 1-5)
- c. Veronica stated on occasion Peggy Evers would assign another subcontractor to work with her on larger homes. However, Peggy Evers always paid these co-workers and did not take it out of her pay (Ht 16, ln 18). Otherwise, Veronica denies ever having any employees or other people work with her.
- d. Peggy Evers had total control over her work assignments and schedule each week. Claimant had no control (H17, lln 3-12). On occasion Peggy Evers would assign other worker subcontractors to work with her. However, the defendant Peggy Evers Cleaner/Concepts always paid these other workers directly as they were cleaning workers employed by Peggy and not Veronica.
- e. Veronica testified she was paid per house and paid twice each month on the 2nd and 16th day of the month. Peggy Evers delivered her pay check to her each pay period and the checks were issued by Peggy Evers on the "payroll" checks with the only deduction being for workers compensation insurance premiums (DefAPA, pp1-35).
- f. Claimant testified at the hearing workers compensation insurance premiums were deducted from her paycheck by Peggy Evers each pay period. This was confirmed by Peggy Evers who testified she also deducted workers compensation insurance premiums from all of the other 10 to 40 subcontractors during the entire time of her employment (Ht 92, lln9-25).
- g. Claimant stated every check she received from August 15, 2015 to January 18, 2017 was signed by Peggy Evers and made payable only to Veronica Rodriguez (Def APA pp. 23-35). All checks were delivered to Veronica by Peggy and signed by Peggy. No monies for other workers/subcontractors were co-mingled with and/or deducted from Claimant's pay checks. Never did she get paid for her sister or another co-worker. The Defendant produced no such check or evidenceto the contrary in the payroll records consisting of all checks and a list of jobs for which she was being paid by Cleaner Concepts (DEf APAs 1-35)
- h. Veronica Rodriguez is a 44 years old (Ht 12, lns 2-4) Hispanic cleaning lady who testified she was a self-employed house cleaner who went to work with Peggy Evers owner of Cleaner Concepts approximately mid-August 2015. She suffered job-related injuries to her right knee, back and neck when she fell December 5, 2016 while doing house cleaning work for Cleaner Concepts (Ht 30, lns 16-19). Veronica testified she reported the job-related accident to her

supervisor Molly Aribé (sic?) and informed her of her injuries and need for medical care (Ht.31, Ins 13-18). She went to HealthFirst for medical care and treated as reflected in the medical records of HealthFirst and Tri-County Radiology all of which are summarized herein.

- i. She was hired to do housecleaning work exclusively by Peggy Evers/Cleaner Concepts. She testified she was paid on a per house basis and earned approximately \$600 per week. Her testimony in this regard is supported by the payment summary and cancelled checks contained in the financial records of Peggy Evers/Cleaner Concepts (Def APA pp 1-35)(Hearing Exhibit 1 submitted).
 - j. Veronica was paid by Peggy Evers/Cleaner Concepts on the 2nd and 16th day of each month from the date she was hired until the date of her injuries arising out of her job December 5, 2016 (Ht Page18, Ins 1-6). Veronica said Peggy Evers signed her checks and delivered the checks to her for each pay period (Ht, 18, Lns19-24).
 - k. Veronica also testified the equipment such as vacuum cleaners, brooms, mops, ladders and supplies were provided to her by Peggy Evers. Further, her work was inspected by Peggy or her sister Molly at least once and often twice each day to make sure she was doing her job. Veronica stated Peggy had the right to fire or terminate her (Ht 19, ln3-10).
 - l. Veronica further testified that Peggy involuntarily deducted workers compensation insurance premium from her checks without total disclosure. Both Peggy and her sister Molly told the Claimant, when questioned by the Claimant, the amount of reduction in each check was a deduction for Workers Compensation insurance coverage for her (Ht.22, 2-13).
 - m. Veronica admits she was paid under a 1099 which Peggy gave to her so she could pay her taxes. Veronica also admitted she had worked for Peggy Evers before and understood her method of payment would not include deductions for payroll taxes.
 - n. Veronica testified her job-related accident occurred December 5, 2016 and she suffered injuries to her right knee, spine and neck (Ht 12, Ins 10-15). I find the job-related resulted from a fall which fall arose out of and was within the scope of her employment with Peggy Evers/ Cleaner Concepts
5. On 11/03/2017, at the hearing before the undersigned single Commissioner, the Employer testified regarding her working arrangement with the Claimant was an independent contractor/sub-contractor and how she was paid. In addition, the Employer testified regarding the deductions from the wages paid to the Claimant for workers' compensation insurance.

TESTIMONY OF PEGGY EVERS CLEANER CONCEPTS

- a. When ask by her attorney what do you do for a living, Peggy replied, "I am a cleaning contractor, and I've been a cleaning contractor for over 30 years" (Ht. 62, Ins 11-24). She further stated primarily we have vacation homes that we

- clean (Ht 62, lns20-24). States they work on Hilton Head and have lots of homeowners as clients.
- b. When ask who cleans or how do you arrange to have houses cleaned in your business Peggy Evers stated on Monday mornings they contact the different vendors (subcontractors) and we ask them if they are available. We then schedule the subcontractor workers as needed (Ht.64, lns3-13). She further elaborated that Cleaner Concepts may have employed 40 contractors in the summertime (Ht. 65, lns 1-14). Peggy Evers testified she did not consider these contractors as employees and they do not deduct payroll taxes from them (Ht 65, lln 12-18) Also states in summertime they may have 40-50 houses to clean per day (Ht. 65, 1-9) which requires significant number of workers/subcontractors..
 - c. Peggy testified, upon inquiry by Commissioner Campbell, that she deducted workers compensation insurance premiums from the pay checks of each of her subcontractors such as Veronica.(Ht. 92, lns 13-15 also lns 23-25). She indicated but for two office employees, her sister Molly and Mara, all others were subcontractors.
 - d. Peggy testified that the subcontractors provide their supplies consisting of soap, shampoo, paper towels, laundry soap and amenities (Ht 67, lln2-12). Veronica stated Peggy provided all the equipment and supplies. Again the financial records of Veronica do not support the notion that supplies were deducted from her pay checks. Peggy testified her business is very time sensitive (Ht 67, 24-25)(Ht 66, lln 1-6).
 - e. Peggy Evers admits under cross-examination that she deducted workers compensation insurance premiums each payday from the Claimant's checks (Ht 90, lln8-16). She further testified that she deducted workers compensation insurance premiums from all of her subcontractors (Ht. 92, lln 13-25). A review of the financial records submitted by the defendant (DefAPAs, pp 1-35) reveals the magnitude of the workers compensation insurance premium deduction from the Claimant alone to be approximately \$1913.18 when calculated from August 15, 2015 to December 5, 2016. These calculations are derived from the financial records submitted as accurate by the Defendant(Def APAs, pp 1-35) with respect to the employment of the Claimant from August 15, 2015 to January 18, 2017. Contained within the Defendant's financial records were copies of the cashed payroll checks given to Veronica Rodriguez. A review reveals that all of these payroll checks were made out exclusively to Veronica Rodriguez and no other. All checks were executed by Margaret Anne Evers who is one and the same person as Peggy Evers (Ht. 62, lnn 1-5).

NOW, THEREFORE, I FIND AS FOLLOWS

1. Based on a preponderance of the evidence, including the sworn testimony of the Claimant and Employer, as well as the payment records provided by both parties, I hereby find Claimant was a sub-contractor for the employer. I hereby find Claimant was a sub-contractor for the Employer pursuant to § 42-1-400 of the S.C. Code of Laws as annotated. I also find that the Commission has jurisdiction pursuant to § 42-1-400 of the ACT. The parties stipulated to proper venue and I so find.

2. However, due to the withholdings from the Claimant's payments by the Employer for workers' compensation insurance premiums and pursuant to § 42-1-400 of the ACT, I hereby find Defendants are responsible for providing workers compensation benefits under the Act to the Claimant. Based on a preponderance of the evidence, particularly the financial records of the defendant Peggy Evers/Cleaner Concepts, I find that the Claimant worked personally as a singularly self-employed house cleaner and subcontractor for the owner. The defendant Peggy Evers testified she collected and paid workers compensation insurance premiums to the carrier on all of her subcontractors which consist of as many as 40 workers (Ht 65, lln4-9) all of whom were in the cleaning business. I find the doctrine of estoppel prevents the carrier from denying coverage.
3. Therefore, based on a preponderance of the medical evidence and the sworn testimony of the Claimant, I hereby find Claimant sustained a compensable injury to her right knee.
4. Claimant is not at MMI.
5. A determination of permanency is premature at this time.
6. Claimant is entitled to all past causally-related expenses for her right knee.
7. Claimant is entitled to an evaluation and all causally-related treatment, if recommended, by a physician of the Defendants' choosing, with a specialty to the knee.
8. Claimant is entitled to an evaluation of her neck, by a physician of the Defendants' choosing, with a specialty to the cervical spine.
9. Claimant is entitled to an evaluation of her back, by a physician of the Defendants' choosing, with a specialty to the back.
10. Defendants' chosen specialists are to be provided with all past causally-related medical records.
11. Defendant's chosen specialists are not to be physicians that have previously treated the Claimant nor from practices that have previously treated the Claimant.
12. Defendants are to schedule appointments with specialists within 30 days of the service date of this Order.
13. With regard to Claimant's AWW and CR, based on the Claimant's sworn testimony and payment records, and absent any documentary evidence reflecting payments to other individuals from the wages paid to the Claimant, I hereby find the proper calculation of Claimant's AWW shall be based on the amounts reflected on Claimant's payment history from Exhibit 1, for the four quarters prior to her accident. Thus, I find that the Claimant AWW is \$569.69 which yields a CR of \$379.81.
14. Absent documentation reflecting the Claimant was offered light duty to accommodate her work restrictions and based on sworn testimony, I hereby find Claimant is entitled to an award of TTD from the last date she was paid by the Employer and continuing.
15. All other issues are held in abeyance at this time.

CONCLUSIONS OF LAW

1. **Statutory Employment and Subject Matter Jurisdiction** arises pursuant to §42-1-400 of the ACT. I find the Claimant is a singular, self employed sub-contractor (cleaning lady) who works and does the physical labor of cleaning for the Owner Peggy Evers/Cleaner Concepts. "It is South Carolina's policy to resolve jurisdictional doubts in favor of the inclusion of employers and employees under the Workers' Compensation Act." *Fortner v. Thomas M. Evans Const. and Development, LLC (S.C. App. 2013) 402 S.C. 421, 741 S.E.2d538.*
2. **Notice of the Accident and Injuries.** Pursuant to §42-15-20 and §42-15-40 of the Act, as amended (2007) proper notice of the injury was given to direct employer by

personal and verbal communication with her supervisor Molly Aribes(sic?) and Peggy Evers.

3. **Compensability**. That on or about December 5, 2016, Claimant sustained compensable accidental injuries to her back, neck and right knee arising out of and in the course of her employment with the employer Defendant Peggy Evers/Cleaner Concepts.
4. **Claimant's entitlement to past, present and ongoing compensation** – SC Code Ann. §42-9-10; §42-9-20; §42-9-260; *Cranford v. Hutchinson Construction* (No. 4939); Regulation 67-504
5. **Claimant's entitlement to past, present and future medical treatment/benefits and payment thereof** - SC Code Ann. §42-15-60, to include but not be limited to additional medical treatment, transportation to medical appointments or medical mileage, and interpretation services at same, pursuant to *Dodge v. Brucoli, Clark, Layman, Inc.*, 334 S.C. 574, 514 S.E. 2d 593 (S.C. App. 1999).

AWARD

IT IS HERBY ORDERD, ADJUDGED, AND DECREED AS FOLLOWS:

1. Jurisdiction and venue are proper. Based on a preponderance of the evidence, including the sworn testimony of the Claimant and Employer, as well as the financial payment records, I hereby find and order that Claimant was a sub-contractor for the Employer pursuant to § 42-1-400 of the S.C. Code of Laws as annotated.
2. However, due to the withholdings from the Claimant's payments by the Employer for workers' compensation insurance and pursuant to § 42-1-400, I hereby find and order the Defendants are responsible for providing workers compensation insurance benefits under the ACT to the Claimant.
3. Based on a preponderance of the medical evidence and the sworn testimony of the Claimant, I hereby find Claimant sustained a compensable injury to her right knee.
4. Claimant is not at MMI.
5. A determination of permanency is premature at this time.
6. Claimant is entitled to all past causally-related expenses for her right knee.
7. Claimant is entitled to an evaluation and all causally-related treatment, if recommended, by a physician of the Defendants' choosing, with a specialty to the knee.
8. Claimant is entitled to an evaluation of her neck, by a physician of the Defendants' choosing, with a specialty to the cervical spine.
9. Claimant is entitled to an evaluation of her back, by a physician of the Defendants' choosing, with a specialty to the back.
10. Defendants' chosen specialists are to be provided with all past causally-related medical records.
11. Defendants' chosen specialists are not to be physicians that have previously treated the Claimant nor from practices that have previously treated the Claimant.

12. Defendants are to schedule appointments with medical specialists within 30 days of the service date of this Order.
13. With regard to Claimant's AWW and CR, based on the Claimant's sworn testimony and payment records, and absent any documentary evidence reflecting payments to other individuals from the wages paid to the Claimant, I hereby order the proper calculation of Claimant's AWW shall be based on the amounts reflected on Claimant's payment history from Exhibit 1, for the four quarters prior to her accident. Thus, I find and order that the Claimant AWW is \$569.69 which yields a weekly CR of \$379.81.
14. Absent documentation reflecting the Claimant was offered light duty to accommodate her work restrictions and based on sworn testimony, I hereby find Claimant is entitled to an award of TTD from the last date she was paid by the Employer and continuing.
15. All other issues are held in abeyance at this time.

IT IS SO ORDERED.



Commissioner Mike Campbell

January 5, 2018

CERTIFICATE OF SERVICE

This is to certify the undersigned has this date served this order in the above entitled action upon all parties to this cause by sending an electronic copy hereof by electronic mail addressed to the attorney or attorneys for said parties or by depositing a copy hereof, postage paid, in the United States certified mail addressed to any unrepresented party.

January 5, 2018

By: Barbara Cheeseboro, Administrative Assistant to Commissioner Campbell

**SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
JUDICIAL CONFERENCE DECISION AND ORDER**

**Veronica Rodriguez v Peggy Evers
SCWCC: 1619767
Commissioner: Campbell**

This matter was heard before the South Carolina Workers' Compensation Full Commission in Judicial Conference on a **Motion to Reinstate**. The Commissioners considered the matter and ordered the matter handled in the following manner:

IT IS, THEREFORE, ORDERED the pending appeal of the Administrative Order of the Commission is hereby;
 Dismissed as Interlocutory. Set for Oral Argument.

IT IS, THEREFORE, ORDERED the pending motion be, and hereby is;
 Granted. Denied. Dismissed Preserved for hearing

BEFORE THE;
 Hearing Comm. Jurisdictional Comm. Full Commission.

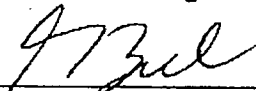
IT IS, THEREFORE, ORDERED this matter be, and hereby is; remanded to take such action and enter an Order consistent with the Court's directive.

Remand to Panel as indicated below.
 Barden James Taylor
 Beck Campbell Wilkerson
 McCaskill

Remand for Order consistent with the Order of the Court.
 Remand to the Hearing Commissioner.
 Remand to the Jurisdictional Commissioner.
 Other: _____

Remand: Panel Oral Argument. En Banc Oral Argument.

AND IT IS SO ORDERED.



**T. Scott Beck, Chair
For the Commission**

Columbia, South Carolina

4/16 2018

CONCURRING:	NOT PARTICIPATING:	DISSENTING:
Commissioner Susan S. Barden	_____	_____
Commissioner Melody James	_____	_____
Commissioner Aisha Taylor	_____	_____
Commissioner Avery Wilkerson	_____	_____
Commissioner Michael Campbell	<input checked="" type="checkbox"/>	_____
Commissioner Gene McCaskill	_____	_____

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY THE UNDERSIGNED HAS THIS DATE SERVED THIS ORDER IN THE ABOVE ENTITLED ACTION UPON ALL PARTIES ELECTRONICALLY OR BY DEPOSITING A COPYHEREOF, POSTAGE PAID, IN THE UNITED STATES MAIL

This 16 day of April, 2018.

By: Valerie D. Peller
 SCWCC Judicial Department

**SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
JUDICIAL CONFERENCE DECISION AND ORDER**

**Veronica Rodriguez v Peggy Evers
SCWCC: 1619767
Commissioner: Campbell**

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BEFORE THE;
 Hearing Comm. Jurisdictional Comm. Full Commission.


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Remand to Panel as indicated below.
 Barden James Taylor
 Beck Campbell Wilkerson
 McCaskill

Remand for Order consistent with the Order of the Court.
 Remand to the Hearing Commissioner.
 Remand to the Jurisdictional Commissioner.
 Other: _____

Remand: Panel Oral Argument. En Banc Oral Argument.

AND IT IS SO ORDERED.


**T. Scott Beck, Chair
For the Commission**

Columbia, South Carolina

5/21 2018

CONCURRING:	NOT PARTICIPATING:	DISSENTING:
Commissioner Susan S. Barden	_____	_____
Commissioner Melody James	_____	_____
Commissioner Aisha Taylor	_____	_____
Commissioner Avery Wilkerson	_____	_____
Commissioner Michael Campbell	<u> x </u>	_____
Commissioner Gene McCaskill	_____	_____

CERTIFICATE OF SERVICE
THIS IS TO CERTIFY THE UNDERSIGNED HAS THIS DATE SERVED THIS ORDER IN THE ABOVE ENTITLED ACTION UPON ALL PARTIES ELECTRONICALLY OR BY DEPOSITING A COPY HEREOF, POSTAGE PAID, IN THE UNITED STATES MAIL

This 21 day of May, 2018.
 By: Valerie D. Deller
 SCWCC Judicial Department

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500 • Post Office Box 1715
Columbia, South Carolina 29202-1715
(803) 737-5723 www.wcc.sc.gov



WCC File #: Pending
Carrier File #: PEWC734403001
Carrier Code #: _____
Employer FEIN #: _____

Claimant's Name: Veronica Rodriguez Texacahua SSN: - - Employer's Name: Cleaner Concepts
Address: _____ Address: P.O.Box 552
City: _____ State: SC Zip: _____ City: Isle of Palms State: SC Zip: 29451
Home Phone: () - _____ Work Phone: () - _____ Insurance Carrier: Berkshire Hathaway GUARD Ins. Co.
Preparer's Name: Don C. Gibson Law Firm: Gibson Law Firm Preparer's Phone #: (843) 744-1887

A claim for workers' compensation benefits is made based on the following grounds: Date of Injury or Illness: 12/05/2016

- Injury Illness Repetitive Trauma Occupational Disease Physical Brain Injury Concurrent Jurisdiction
- The claimant sustained an injury to right knee, cervical, thoracic and lumbar pain (Part(s) of Body Injured) on 12/05/2016 in Isle of Palms County, State of SC. Body part(s) affected are: headaches, pain right knee, cervical, thoracic and lumbar, neck
 - Briefly describe how the accident occurred. client was carrying cleaning products, she slipped from the stairs at the front of the house falling to the ground
 - Both the claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of injury.
 - The relationship of employer and employee existed at the time of injury.
 - At the time of the injury the claimant was performing services arising out of and in the course of employment.
 - Notice of the accidental injury was given to the Employer on 12/05/2016 in the following manner: on the phone
 - Due to injury, the claimant is in need of (check one):
 (a) medical examination and treatment for: All injuries listed above and referral to Southeastern Spine for treatment ortho. for knee treatment
 (b) additional medical examination and treatment for: All injuries listed above and any related medical problems which arise therefrom.
 - Due to injury, the claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of: 12/05/2016 through the present and continuing as claimant has significant medical restrictions
 - Due to the injury, the Claimant has permanent disability of the following nature and extent (check one):
 (1) General Disability: Total Partial (2) Specific Disability: Total Partial (3) Wage Loss
 - A determination of permanent disability is premature at this time.
 - Due to the injury, the Claimant has a serious bodily disfigurement consisting of:
10a. At the time of the injury, the Claimant was paid weekly wages of \$TBD, and demands accounting of days worked and wages earned as provided by law.
10b. Give names and addresses of all employers for whom the Claimant has worked since the date of the accident: none
 - Further grounds or unusual aspects of claim: carrier has sent claimant for MRI, but has failed to establish medical treatment. Carrier has failed to commence TTD benefits for her out-of-work status.
 - List names and addresses of all physicians or other medical specialists who have seen or treated the Claimant as a result of the accident: Health First Rapid Care 8740 Rivers Avenue, Charleston SC 29406 and West Ashley Diagnostic Imaging, 1975 H. Maywood Dr., Charleston SC 29414, Lowcountry Orthopaedics 2880 Tricom Street, North Charleston SC 29406.
 - To the best of your knowledge, did you have any prior permanent disability? If yes, describe:
 - Appropriate benefits as provided in the Act for the above grounds and other relief as the Workers' Compensation Commission may direct as just and proper.
 - 13a. I am filing a claim. I am not requesting a hearing at this time. 14. Estimated time needed for hearing: 1hr
 - 13b. I am requesting a hearing. A \$25 fee is required.
 - Mediation
 a. Mediation is requested to be ordered pursuant to Reg. 67-1801B.
 b. Mediation is required pursuant to Reg. 67-1802.
 c. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.
 d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.
Questions regarding mediation may be submitted to mediation@wcc.sc.gov

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to Berkshire Hathaway GUARD Ins. Co. Address: P.O. Box 1368 Wilkes Barre PA 18703-1368 on the 3rd day of March, 2017, by first class postage certified mail personal service
I verify the contents of this form are accurate and true to the best of my knowledge.

Preparer's Signature: _____ Attorney for the Claimant: dgibson@gibsonlaw.com Title: _____ Email: _____ Date: March 03, 2017

Questions about the use of this form should be directed to the Claims Department at 803.737.5723. Refer to Regulations 67-204 through 67-211 and Regulations 67-601 through 67-615 as well as Reg. 67-1801. WCC Form # 50 Employee's Notice of Claim and/or Request for Hearing Revised 7/13

STATE OF SOUTH CAROLINA, COUNTY OF CHARLESTON
BEFORE THE WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NUMBER: pending

VERONICA RODRIGUEZ)
TEXACAHUA,)
)
Claimant/Employee,)
)
vs.)
)
CLEANER CONCEPTS,)
)
Employer,)
)
and,)
)
BERKSHIRE HATHAWAY)
GUARD INS. CO.,)
)
Carrier/Defendants.)

CERTIFICATE OF SERVICE


I HEREBY CERTIFY that I, the undersigned, am an employee of Gibson Law Firm LLC, and that I served on the date set forth below a copy of the document(s) described below, in connection with the above-captioned matter and pursuant to SC Code Ann. §§ 15-9-930 and 15-9-940, by depositing a copy of same in the United States Mail, postage prepaid, addressed to the following:

TO: Via First Class Mail
Ms. Amy Bracy, Judicial Director
SC Workers' Compensation Commission
PO Box 1715
Columbia, SC 29201

Via First Class Mail
Berkshire Hathaway GUARD Ins. Co.
PO Box 1368
Wilkes Barre, PA 18703-1368

DOCUMENT: Form 50 Requesting a Hearing

March 03, 2017
North Charleston


Olga Runza
Assistant to Don C. Gibson

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
803-737-5675 www.wcc.sc.gov



WCC File #: 1619767
Carrier File #: PEWC734403-001
Carrier Code #: _____
Employer FEIN #: _____

Claimant's Name: Veronica Rodriguez SSN: _____ Employer's Name: Peggy Evers
Address: _____ Address: P.O. Box 552
City: _____ State: SC Zip: _____ City: Isle of Palms State: SC Zip: 29451
Home Phone: () - _____ Work Phone: () - _____ Insurance Carrier: NorGuard Insurance Company
Preparer's Name: Robert E. Horner, Esquire Law Firm: Speed-Seta Law Firm Preparer's Phone #: (803) 748-2919

REQUEST FOR COMMISSION REVIEW

Request for Commission Review by Claimant Employer (check one) Date of Injury or Illness: Dec 5 2016

The undersigned makes application for review of the findings of the Commissioner in the above-captioned case. The request for review is based on the following grounds: (State the grounds of your appeal in the form of questions presented. Each question presented must contain a concise statement of one proposition of law or fact. Refer to evidence by title and exhibit number. Use additional pages if necessary).

See ADDENDUM

(Check one) Oral argument is is not requested. Appellant's request for oral argument is waived if not indicated on this form.

Mediation

Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.

Questions regarding mediation may be submitted to mediation@wcc.sc.gov.

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to Don Gibson, Esquire
address P.O. Box 60669; North Charleston, SC 29419 on the 19th day of 2018 by first class postage certified mail personal
service.

Preparer's Signature

Title Attorney for the Carrier

Email bhorner@speed-seta.com

Date 01/19/2018

SCWCC

Check this box if you are not represented by an attorney

Questions about the use of this form should be directed to the Judicial Department at 803.737.5675 or appeals@wcc.sc.gov.

JAN 20

If the claimant appeals and is not represented by counsel, the Judicial Department will properly serve this form pursuant to Reg. 67-697C. Pursuant to Reg. 67-205 and Reg. 701, the appeal must be postmarked no later than 14 days from the date of service of the Decision and Order of the Commissioner along with the filing fee. Attach a Form 32, if you are unable to pay the filing fee. Refer to Reg. 67-211 and Reg. 67-701 through 711.

1. The Hearing Commissioner erred numerous statements throughout the statement of the case and assuming facts that were not in evidence including statement based upon what is alleged to be the insurance carrier's intent in denying the case and the reasons for refusing to authorize medical care or TTD for the Claimant when the grounds for denying the case are based upon the Claimant's status as an independent contractor. Other erroneous statements included within the recitation of facts include the finding that the Claimant has received no income since January 18, 2017.
2. The Hearing Commissioner erred in finding that the Claimant was a statutory employee under South Carolina Code section 42-1-400 and erred in applying the statutory employee test when the Claimant did not qualify as a statutory employee under this Code section or under Smith v. Squires Timber Co., 311 S.C. 321, 428 S.E.2d 878 (1993).
3. The Hearing Commissioner erred in finding that the insurance carrier took steps to deny the claim based upon problems with the Claimant's MRI when the denial was based upon the fact that the Claimant was an independent contractor and not employee, and no evidence was presented as to the insurance carrier's denying a claim based upon MRI results. Finding of Fact 1.
4. The Hearing Commissioner erred in finding that there was evidence that the Claimant was offered light duty when the Claimant continued working light duty for almost 1 month following her alleged work related injury. Additionally, Claimant was later discovered working before the Hearing. Finding of Fact 1.
5. The Hearing Commissioner erred in finding that the Claimant was a subcontractor entitled to coverage under South Carolina Code section 42-1-400; there is no evidence that the Claimant was an employee of a subcontractor so as to satisfy the requirement under the Act of being a statutory employee entitled to coverage. Smith v. Squires Timber Co., 311 S.C. 321, 428 S.E.2d 878 (1993). Finding of Fact 2.
6. The Hearing Commissioner erred in applying the three-part test applicable to statutory employees there was no evidence that the Claimant qualify as a statutory employee and she was not the employee of an independent contractor. Smith v. Squires Timber Co., 311 S.C. 321, 428 S.E.2d 878 (1993). Finding of Fact 2.
7. The Hearing Commissioner erred in applying Fortner v. Thomas M. Evans Constr. & Dev., L.L.C., 402 S.C. 421, 429, 741 S.E.2d 538, 543 (Ct. App. 2013) when the case law of Smith v. Squires Timber Co., 311 S.C. 321, 428 S.E.2d 878 (1993) establishes that the Claimant in this case not legally qualify as a statutory employee. Findings and Directives 2.
8. The Hearing Commissioner erred in finding that the Claimant was given additional work restrictions on February 23, 2017, when the Claimant went to specifically asked for additional restrictions, and it was later shown that the Claimant was working despite any alleged restrictions she claimed to be under. Findings and Directives 2.
9. The Hearing Commissioner erred in finding that there was any evidence the Claimant was told that the deductions from her paycheck were for workers' compensation insurance coverage

for the Claimant. The evidence at the hearing established that the deductions were for those subcontractors that the Claimant brought to the houses to assist her cleaning.

10. The Hearing Commissioner erred in finding that there was no evidence to support the Defendant's position that supplies were deducted from the independent contractor's paychecks, when it was established at trial that contractors who failed to have their own supplies had to purchase them from the Defendant employer.

11. The Hearing Commissioner erred in failing to consider the reasons that the Defendant ever deducted workers' compensation insurance premiums from her subcontractors pay in reaching his decision; namely, as testified to by the Defendant Evers, the cleaning contractors brought their own labor to the jobsite to assist them and none of the contractors carried their own workers' compensation insurance, potentially making Defendant Evers a statutory employer of those employees, for which she covered workers' compensation insurance but made her independent contractors cover the cost of. Finding of Fact 2.

12. The Hearing Commissioner erred in finding that the Claimant was a subcontractor under South Carolina Code section 42-1-400 to the extent that the Claimant could be a covered statutory employee, as this argument was foreclosed by the Court of Appeals in the case of Smith v. Squires Timber Co., 311 S.C. 321, 428 S.E.2d 878 (1993). Finding of Fact 2.

13. The Hearing Commissioner erred in finding that the withholding of workers' compensation fees from the Claimant's payments rendered the Claimant entitled to coverage under South Carolina Code section 42-1-400. Finding of Fact 2.

14. The Hearing Commissioner erred in finding the doctrine of estoppel prevented the carrier from denying coverage. The issue of estoppel was not raised at the hearing and there is no evidence to support the doctrine, as the reason for the deduction of workers' compensation payments was explained by the Defendant Evers and was never intended to cover the Claimant. Finding of Fact 2.

15. The Hearing Commissioner erred in finding that the Claimant was entitled to all causally related expenses for her right knee, her neck, and her back, as the Claimant was an independent contractor and not entitled to benefits under the Act. Finding of Fact 6, 7, 8, 9, and 10.

16. The Hearing Commissioner erred in finding that the Claimant was entitled to an award of TTD, as there was no evidence that the Claimant was unable to work, as she continued to work following her accident up until she intentionally sought out greater restrictions; moreover, additional evidence was discovered, but not considered by the Hearing Commissioner, which showed the Claimant was, in fact, working though she testified falsely to that fact. Finding of Fact 14

17. The Hearing Commissioner erred in finding the Claimant a statutory employee under the Act for the reasons set forth herein and incorporated into this assignment of error. Conclusion of Law 1.

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JUDICIAL

18. The Hearing Commissioner erred in finding that the Claimant suffered a compensable injury because the Claimant was an independent contractor and not entitled to benefits under the Act. Conclusion of Law 3.

19. The Hearing Commissioner erred in finding the Claimant was entitled to past, present, and ongoing compensation, as the Claimant was not entitled to compensation due to her status as an independent contractor; moreover, Claimant was not entitled to compensation due to the fact she was working since her accident and since she stopped working for the Defendant. Conclusion of Law 4; Award.

20. The Hearing Commissioner erred in finding the Claimant was entitled to past present and future medical treatment, as the Claimant is not entitled to compensation due to her status as an independent contractor. Conclusion of Law 4, 5; Award.

21. The Hearing Commissioner erred in his award of those benefits outlined under that section of his order entitled "Award" because the Claimant is an independent contractor and could not establish that she was a statutory employee under the act and the case of Smith v. Squires Timber Co., 311 S.C. 321, 428 S.E.2d 878 (1993). Conclusion of Law 4, 5; Award.

22. The Hearing Commissioner erred in denying the Defendants' motion to submit additional or newly discovered evidence in this case pursuant to S.C. Code 1-23-380 and S.C. Reg. 67-707, as the evidence in question qualified as additional evidence that was unable to be presented at the Hearing, that the evidence in question was highly relevant to the issues before the Hearing Commissioner, and that the consideration of the new evidence was required in order to prevent a fraud upon the Commission. To wit, the Claimant alleged that she is unable to work and is entitled to TTD under the Act. The Claimant testified that she had not worked since stopping work shortly after her accident. That the Defendants conducted surveillance based upon the Claimant's appearance at the originally-scheduled Hearing a week prior to the Hearing. That surveillance was conducted, and that said surveillance showed the Claimant working as a housekeeper the day before she testified at the Hearing that she had not worked. That the issue of Claimant working goes directly to her credibility and goes to her entitlement to TTD, which the Hearing Commissioner awarded.

The evidence sought to be introduced established the following:

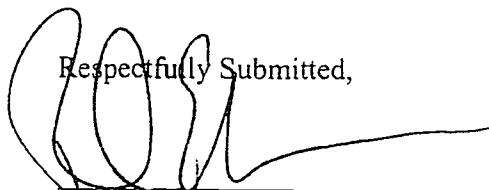
On Thursday, November 2, 2017, the Claimant left her residence at 8:07 a.m. after loading a step ladder into her vehicle. She subsequently traveled to 1452 Eutaw Battalion Drive Road in Charleston. She then removed a vacuum cleaner and cleaning supplies in a "caddy" from her truck, as well as subsequently removing the step ladder. She also removed mops and brooms from her vehicle as well. The Claimant then began to clean the residence, both inside and out, both using the step ladder and not. Some of this was done while she was simultaneously using her cell phone. She also carried these supplies back to her truck approximately 2.5 hours later when she finished cleaning the house, along with a large bag that she took with her. Later, after buying a love seat sofa at a thrift store, the Claimant traveled home where she lifted and carried the sofa into her house with the help of a young male. This evidence goes to the heart of the Claimant's testimony that she did not own her own supplies, did not provide her own supplies, did not work

for other people, and that she was not working at the time, and her claim to an entitlement of TTD. Other evidence sought to be introduced would have shown that the Claimant has been cleaning houses for at least several months before the Hearing.

23. In addition to presenting the failure of the Hearing Commissioner to consider the additional and/or newly discovered evidence as a grounds for appeal, the Defendants submit that this Appellate Panel has the right to consider this additional or newly discovered evidence under S.C. Code 1-23-380 and S.C. Reg. 67-707 in determining the issues before it, and the Appellate Panel should consider such evidence in deciding whether to affirm, reverse, remand, or take any other action with regards to this matter. As noted, Claimant testified on November 3, 2017, that she had not worked and sought TTD. Defendants had undertaken surveillance of the Claimant due to the lack of any noticeable injury while the Parties were waiting for the originally-scheduled hearing that was on October 23, 2017, which was unable to proceed due to lack of time and the schedule of the Georgetown County Court House. Surveillance was conducted on November 2, 2017, and the Claimant was videotaped cleaning a house for over two hours and later videoed moving heavy furniture. Defendants sought to introduce this videotape as to the issues of Claimant's status as an independent contractor, her credibility, and the issue of TTD which Claimant was seeking. The introduction of this evidence is necessary to prevent a fraud upon this court by the Claimant. The Supreme Court has described fraud on the court as "a wrong against the institutions set up to protect and safeguard the public." HazelAtlas Glass Co. v. Hartford-Empire Co., 322 U.S. 238, 246 (1944). It implicates the South Carolina Workers' Compensation Commission's statutory obligation and duty to report cases of suspected false statements and misrepresentations to the Attorney General's Office under South Carolina Code Section 42-9-440.

24. Even if the award of benefits is upheld, the Appellate Panel must remand this matter to a Hearing Commissioner to take additional evidence of Claimant's wages which she collected during this time and any award of TTD must be modified to reflect TPD, as the evidence established Claimant was working but not disclosing any such work or sums earned, and allowing her to collect TTD would constitute a fraud upon the South Carolina Workers' Compensation Commission.

Respectfully Submitted,



Robert E. Horner
Speed, Seta, Martin, Trivett, & Stublely, LLC
P.O. Box 11669
Columbia, South Carolina 29211

Attorney for Defendant

South Carolina Workers' Compensation Commission

1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
(803) 737-5723



WCC File #: 1619767

Carrier File #: PEWC734403001

February 16, 2018

FORM 31 BRIEFING SCHEDULE AND NOTICE OF APPELLATE HEARING

Peggy Evers v Veronica Rodriguez

Filing Date for Appellant's Brief: March 18, 2018

Subject: Set on Review.
Date: 04/16/18 at 01:30 PM
Location: South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500
Columbia, SC 29201

You are receiving this notice pursuant to South Carolina Regulation 67-704. This matter is to be set for Full Commission Review on the above date. Regulation 67-705(A) requires the appellant to file a brief which includes a statement of the case, questions presented, argument, and the conclusion by the date above. Pursuant to Regulation 67-205, please submit your brief electronically through the **Upload** functionality in eCase located on the Commission's website at www.wcc.sc.gov.

The claimant must attend when not represented by an attorney or when disfigurement is involved. Corporations must be represented by an attorney, and uninsured employers must attend.

Pursuant to South Carolina Regulation 67-705, the Respondent may file a responding brief within fifteen (15) days of service of Appellant's brief. Appellant may then file a reply brief within ten (10) days of service of Respondent's responding brief. All briefs must be received by the Workers' Compensation Commission at least five (5) days before the scheduled date for review.

For questions regarding this matter, please visit eCase Status at www.wcc.sc.gov or contact the Judicial Department of the South Carolina Workers' Compensation Commission at (803) 737-5739.

The Commission requests your presence thirty minutes prior to your scheduled oral argument.

This matter is set before: Panel B

CERTIFICATE OF SERVICE – This is to certify the undersigned has served this notice in the above entitled action upon all parties to this cause by sending a copy hereof by electronic mail or United States mail. Unrepresented parties were served by United States Postal Service first class postage.

By:Eugenia Hollmon, SC Workers' Compensation, February 16, 2018

Party

Employee: Veronica Rodriguez

Employee: Veronica Rodriguez

Employer: Peggy Evers
Carrier: Norguard Insurance Company

Employer: Peggy Evers
Carrier: Norguard Insurance Company

Attorney

Don C. Gibson
dgibson@dgibsonlaw.com
843-744-1887

Stephen B. Samuels
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803-779-4000

Robert Horner
bhorner@speed-seta.com
803-748-2919

M. Stephen Stublely
sstublely@speed-seta.com
803-748-2919

1 MR. HORNER: My APAs have 36 pages,
2 so --

3 MR. GIBSON: Well, I'm on 35 right now.
4 I'm going to turn my attention to 36 in a minute.

5 MR. HORNER: Okay. Just making sure.
6 He said the packet. I just wanted the record to
7 reflect.

8 COMMISSIONER: Okay. Thank you.

9 BY MR. GIBSON:

10 Q. Are those documents there
11 representative of your paychecks that you've got
12 for the entire time you were working for Cleaner
13 Concepts?

14 A. Yes.

15 Q. All right. Now, I'm going to ask you,
16 if I could -- let's just take the first page, page
17 number 1. I'm looking at check 2750. I see a
18 number over here that looks -- it's a list of what
19 you were paid showing you got 829.15. There is a
20 number up there of \$59.85 that was taken out of
21 your paycheck. Did you ever ask Molly what that
22 was?

23 A. Yes, I did ask.

24 Q. Right after you started working and got
25 your first check?

1 A. Yes. They would always take out money.

2 Q. And if you would just kind of look
3 through there. It looks like on every page in
4 there that every time you got a paycheck, there
5 was money taken out of your paycheck?

6 A. Yes, that's correct.

7 Q. Okay. And what did Molly tell you that
8 was for?

9 A. She told me that it was for the
10 insurance for workers' comp.

11 Q. All right. Then did you go ask Peggy
12 the same question?

13 A. Yes.

14 Q. Okay. I was just taking note that in
15 those Claimant APAs that each -- the pattern is
16 there on each check that she was written, a
17 certain deduction that she's testified to. On
18 each of the pages, did you understand it was
19 workers' comp being taken out of your paycheck?

20 A. Yes.

21 Q. Did you ever authorize or tell anybody
22 they could do that?

23 A. No.

24 Q. Okay. Next I'm going to show you the
25 Defendant's APA 23 through 35. I don't want 36

1 Q. And on any other day or week that
2 doesn't have a deduction, would Veronica have
3 supplied --

4 A. Sure.

5 Q. -- her own cleaning supplies?

6 A. Sure.

7 Q. And she wouldn't be charged unless she
8 didn't have it?

9 A. Right.

10 Q. So it was her responsibility to have
11 it?

12 A. Yes.

13 Q. You did this out of convenience, so she
14 doesn't have to run to the Family Dollar on a
15 Saturday morning when she realizes she's out of
16 Windex?

17 A. Right.

18 MR. HORNER: All right. I have nothing
19 further.

20 COMMISSIONER: Mr. Gibson?

21 RECROSS-EXAMINATION

22 BY MR. GIBSON:

23 Q. I am going to show you your exhibits,
24 the Defendant's Exhibit 1 through 35 again. Would
25 it surprise you to find out that those little

1 monies that you are taking here, out of them, are
2 either 4.5 percent for page after page after page,
3 4.05? I don't know why it would go up a few times
4 unless the premiums went up on the insurance. Are
5 you telling us these are not workers' comp
6 insurance deductions?

7 A. That's not what I said at all.

8 Q. Well, is that a workers' comp
9 deduction?

10 A. It is.

11 Q. For this employee?

12 A. Yes. It's not -- she's not an
13 employee.

14 Q. For this lady, you're taking a workers'
15 comp deduction from her and providing her with no
16 coverage?

17 A. Sir, she has people that work with her.
18 Her sister is one of them, and other people that I
19 don't know the names of. I know her sister's name
20 because she came to me and asked for her job
21 personally.

22 Q. Don't you have checks made out to her
23 sister? You testified earlier to that.

24 A. Yes.

25 Q. Okay. You don't see where Veronica

1 or to the people that I work for if something were
2 to happen.

3 COMMISSIONER: So you provide -- and
4 I'm trying to get a picture of it.

5 THE WITNESS: I'm sorry.

6 COMMISSIONER: And I know you testified
7 earlier, how many employees did you testify that
8 you have?

9 THE WITNESS: I have two employees.

10 COMMISSIONER: Two employees. Okay.
11 And then, you have how many subcontractors that
12 work for you?

13 THE WITNESS: And I don't take
14 deductions for workers' comp for them, but for the
15 subcontractors, I do.

16 COMMISSIONER: Okay. And how many do
17 those -- do you have of those?

18 THE WITNESS: I -- just to be honest
19 with you --

20 COMMISSIONER: Well, I will simplify it
21 for you.

22 THE WITNESS: Okay.

23 COMMISSIONER: Do you take -- every one
24 of your subcontractors --

25 THE WITNESS: Yes, I do.

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CERTIFICATE

I do hereby certify that the witness whose attached deposition was taken before me in the aforementioned matter was, by me, first duly sworn to testify the truth, the whole truth, and nothing but the truth; that the testimony contained in said deposition was, by me, reduced to writing in the presence of said witness by means of computerized transcription. The said deposition is a true and accurate transcript of the whole of the testimony given by the said witness, as aforesaid.

I do further certify that I am not connected by blood or marriage with any of the parties or their attorneys or agents, and I am not an employee of either of them, nor interested directly or indirectly in the matter of controversy either as counsel, attorney, agent, or otherwise.

Jennifer M. Huggins

Court Reporter And Notary Public

My commission expires: 02/07/2022

State of South Carolina

1333 Main St, Suite 500
P.O. Box 1715
Columbia, S.C. 29202-



Tel: (803) 737-5700
Fax: (803) 737-1234
www.wcc.sc.gov

Workers' Compensation Commission

June 28, 2018

~~George Gallagher~~

~~Speed, Seta, Martin, Trivett & Stublely, LLC~~ Carrier Code No. 01036

~~PO Box 11669~~

~~Columbia, SC 29211~~

Carrier File No. PEWC734403001

Re: Veronica Rodriguez, 1619767
Veronica Rodriguez v. Peggy Evers
Date of Injury: 12/05/2016

Dear George:

The Commission is in receipt of your letter dated June 1st, 2018 in the above-referenced workers' compensation claim. Please allow this to serve as a response.

The information, records, and documents reviewed by the Commission were the documents you filed with the Commission. Regarding the manner and procedure employed by the Commission in reviewing your motions, the Full Commission reviewed and considered the text of the motions you filed, along with the exhibits.

Enclosed please find the vote sheet which was completed by the Full Commission on May 21st, 2018.

If you would like to request a complete copy of the Commission's file, you may do so by following the procedures on our website.

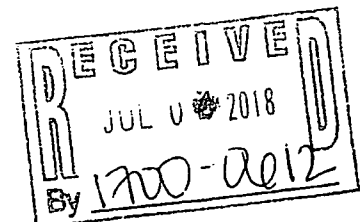
Sincerely,


Amy A. Bracy

Judicial Director

abracy@wcc.sc.gov

Cc: Don Gibson, Esquire with enclosure
Stephen B. Samuels, Esquire with enclosure
Robert Horner, Esquire with enclosure
M. Stephen Stublely, Esquire with enclosure



**SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
JUDICIAL CONFERENCE DECISION AND ORDER**

**Veronica Rodriguez v Peggy Evers
SCWCC: 1619767
Commissioner: Campbell**

This matter was heard before the South Carolina Workers' Compensation Full Commission in Judicial Conference on a Motion to Reinstate. The Commissioners considered the matter and ordered the matter handled in the following manner:

IT IS, THEREFORE, ORDERED the pending appeal of the Administrative Order of the Commission is hereby;
 Dismissed as Interlocutory. Set for Oral Argument.

IT IS, THEREFORE, ORDERED the pending motion be, and hereby is;
 Granted. Denied. Dismissed Preserved for hearing

BEFORE THE;
 Hearing Comm. Jurisdictional Comm. Full Commission.

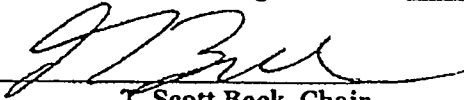
IT IS, THEREFORE, ORDERED this matter be, and hereby is; remanded to take such action and enter an Order consistent with the Court's directive.

Remand to Panel as indicated below.
 Barden James Taylor
 Beck Campbell Wilkerson
 McCaskill

Remand for Order consistent with the Order of the Court.
 Remand to the Hearing Commissioner.
 Remand to the Jurisdictional Commissioner.
 Other: _____

Remand: Panel Oral Argument. En Banc Oral Argument.

AND IT IS SO ORDERED.


**T. Scott Beck, Chair
For the Commission**

Columbia, South Carolina

5/21 2018

CONCURRING:	NOT PARTICIPATING:	DISSENTING:
Commissioner Susan S. Barden	_____	_____
Commissioner Melody James	_____	_____
Commissioner Aisha Taylor	_____	_____
Commissioner Avery Wilkerson	_____	_____
Commissioner Michael Campbell	<input checked="" type="checkbox"/> _____	_____
Commissioner Gene McCaskill	_____	_____

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY THE UNDERSIGNED HAS THIS DATE SERVED THIS ORDER IN THE ABOVE ENTITLED ACTION UPON ALL PARTIES ELECTRONICALLY OR BY DEPOSITING A COPYHEREOF, POSTAGE PAID, IN THE UNITED STATES MAIL

This 21 day of May, 2018.

By: Valerie D. Deller
SCWCC Judicial Department

STATE OF SOUTH CAROLINA
 BEFORE THE
 SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
 WCC FILE NO.: 1619767

Veronica Rodriguez,)
)
 Claimant,)
 v.)
)
 Peggy Evers,)
)
 Employer,)
)
 and)
)
 NorGuard Insurance Company,)
)
 Carrier,)
)
 Defendants.)
 _____)

MOTION TO REINSTATE APPEAL
PURSUANT TO SC REG. 67-705

Defendants Peggy Evers and NorGuard Insurance Company hereby file this Motion to Reinstate Defendant's Appeal pursuant to South Carolina Regulation 67-705.

1. The Defendants appealed this matter following a Hearing before the Hearing Commissioner which was held on November 3, 2017. The Order of the Hearing Commissioner was issued on January 5, 2018.

2. The main issue before the Hearing Commissioner was whether the Claimant was an employee or an independent contractor. The Hearing Commissioner determined that the Claimant was an independent contractor but then held that the Claimant was a statutory employee of the Defendant Peggy Evers.

3. The Defendants timely filed a Form 30 application for appellate review asserting numerous grounds for appeal but first and foremost argued that the Hearing Commissioner erred in finding the Claimant was a statutory employee under South Carolina Code section 42-1-400 and

Smith v. Squires Timber Co., 311 S.C. 321, 428 S.E.2d 878 (1993) (noting the circumstances under which one can be an independent contractor and a statutory employee are very narrow).

4. Additionally, the Defendants moved to introduce new evidence for consideration by the Hearing Commissioner under S.C. Regulation 67-707.

5. The South Carolina Workers' Compensation Commission issued a Form 31 Briefing Schedule on February 16, 2018, with the Appellant's Brief due March 18, 2018, and oral argument on April 16, 2018. (March 18, 2018, was a Sunday, thus making the brief due on March 19, 2018).

6. The deadline for the Appellant's Brief was mis-calendared and was not docketed for March 18, 2018. Accordingly, that deadline passed without the Defendants' appeal being filed. Defendants' appeal was administratively dismissed on March 26, 2018.

7. Defendants filed this Motion to Reinstate the appeal on March 27, 2018.

8. Defendants would move to reinstate the appeal. Through a docketing error, the brief was not calendared correctly. However, the appeal was timely perfected and the Commissioner still has the jurisdiction and the discretion to reinstate the appeal.

9. Under South Carolina Regulation 67-705, an appeal may be reinstated for "good cause." By analogy to the Rules of Civil Procedure (and more specifically Rule 55), in determining good cause, a judge should consider: (1) the timing of the motion for relief; (2) whether the defendant has a meritorious defense; and (3) the degree of prejudice to the plaintiff if relief is granted.

10. The timing of the motion for relief weighs in favor of the Defendants, as the Motion to Reinstate was filed within 24 hours of receiving the administrative dismissal and within 8 days of the day the appellant's brief was due.

11. Defendants would submit that they have a meritorious defense both at law and factually—whether the Hearing Commissioner erred in its application of South Carolina Code section 42-1-400 and Smith v. Squires Timber Co., 311 S.C. 321, 428 S.E.2d 878 (1993) or whether the Hearing Commissioner was correct in applying the law set forth in Fortner v. Thomas M. Evans Constr. & Dev., L.L.C., 402 S.C. 421, 429, 741 S.E.2d 538, 543 (Ct. App. 2013). Moreover, the basis of the appeal goes to the whether the South Carolina Workers’ Compensation has jurisdiction over the parties before it.

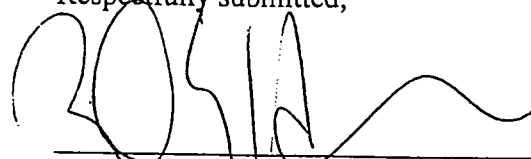
12. Public policy favors the disposition of cases “on their merits” Micronics, Inc. v. South Carolina Department of Revenue, 345 S.C. 506, 511, 548 S.E.2d 223, 226 (Ct. App. 2001). See also Dixon v. Besco Eng'g, 320 S.C. 174, 178, 463 S.E.2d 636, 638 (Ct. App. 1995) (rule addressing setting aside entry of default for “good cause shown” should be Rule 55(c) should be “liberally construed to promote justice and dispose of cases on the merits”). Defendants would contend that the appeal is meritorious and disposing of the case on the merits would serve the ends of justice.

13. Moreover, due to the very short passage of time that has occurred from the time the Appellant’s Brief was due and the time this motion was filed, the Claimant has not suffered any prejudice and would not suffer any prejudice in having this case reinstated and the briefing schedule reinstated.

14. Finally, Defendants have consulted with the attorneys for the Claimant and they do not object to the reinstatement of this appeal.

Based upon the aforementioned, the Defendants would submit that “good cause” exists to reinstate their appeal and would respectfully request the Commission reinstate the appeal.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R. Hornek', written over a horizontal line.

Robert E. Hornek, Esq.
Speed, Seta, Martin, Trivett, & Stublely
P.O. Box 11669
Columbia, South Carolina 29211
(803) 748-2919

Attorney for Defendants

March 27, 2018

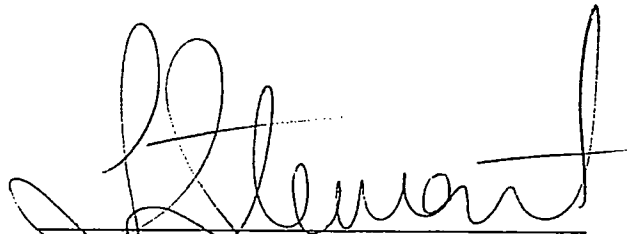
CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Motion to Reinstate Appeal, has been served upon the following parties by placing a copy of the same in the United States mail, first class postage prepaid, addressed to the following as shown below on the 27th day of March, 2018.

S.C. Workers' Compensation Commission
Post Office Box 1715
Columbia, SC 29202

Don C. Gibson, Esquire
Gibson Law Firm
Post Office Box 60669
North Charleston, SC 29419

Stephen Samuels, Esquire
Samuels Law Firm
1320 Richland Street
Columbia, SC 29201

A handwritten signature in black ink, appearing to read "T. Stewart", written over a horizontal line.

Taylor S. Stewart, Paralegal
Speed, Seta, Martin, Trivett & Stublely, LLC
PO Box 11669
Columbia, SC 29211
(803) 748-2919

Attorneys for Defendants

STATE OF SOUTH CAROLINA
 BEFORE THE
 SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
 WCC FILE NO.: 1619767

Veronica Rodriguez,)
)
 Claimant,)
 v.)
)
 Peggy Evers,)
 Employer,)
)
 and)
)
 NorGuard Insurance Company,)
)
 Carrier,)
)
 Defendants.)
 _____)

MOTION TO RECONSIDER

TO: THE SOUTH CAROLINA WORKERS COMPENSATION COMMISSION; STEPHEN SAMUELS, ESQ. AND DON C. GIBSON, ESQ., ATTORNEYS FOR CLAIMANT-

YOU WILL PLEASE TAKE NOTICE THAT pursuant to WCC Regulation 67-215, SCRCP 59 (e), and S.C. Code §1-23-380 (1), the Defendants in the above-captioned claim do hereby Move for the South Carolina Worker’s Compensation Commission (“Commission”) to Reconsider its form Order dated April 16, 2018 summarily denying the Defendant’s Motion to Reinstate the Commission’s administrative dismissal of their Appeal on the merits of the claim, and/or for a Rehearing on same. This Motion is based on the following grounds:

- 1) Defendants timely filed a Motion to Reinstate their Appeal to Full Commission after it was administratively dismissed for failure to timely file an appellant’s brief pursuant to WCC Regulation 67-705 (4). The Regulation specifically provides that “an appeal administratively dismissed by the Judicial Department may be reinstated for “good cause” upon motion to the Commission.” (emphasis added).
- 2) Defendants’ original Motion to Reinstate, which is incorporated herein by reference, sets forth the grounds constituting “good cause” for reinstatement in this case, **including, most importantly, the fact that opposing counsel for Claimant did not object to the reinstatement.** Despite no opposition from Claimant’s counsel, the Commission denied the Motion to Reinstate without explanation. Defendants respectfully submit this was legal error, an arbitrary and capricious abuse of discretion, and/or an unwarranted exercise of discretion. *See S.C. Code § 42-23-380 (5)* (the court may reverse or modify an agency’s decision if substantial rights of a party have been prejudiced by an error of law, made upon unlawful procedure, and/or are otherwise arbitrary,

capricious or characterized by an abuse of discretion or clearly unwarranted exercise of discretion). Defendants urge the Commission to reconsider its ruling and enter a new Order reinstating the Defendants' Appeal on the merits.

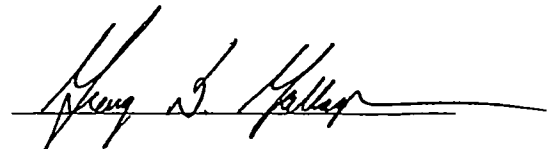
- 3) Generally, the Commission's form Order denying Defendants' Motion to Reinstate violates fundamental notions of due process. Specifically, Defendants argue that an administrative dismissal for a technical failure to submit an appellate filing was not intended to be a primary means for summary disposition of cases pending before the Commission. Indeed, as noted in Defendants' original Motion, South Carolina law strongly favors disposition of cases on their merits, not technicalities or default. *See Mictronics v. S.C. Department of Revenue*, 345 S.C. 506, 548 S.E.2d 223 (Ct. App. 2001); *See also Dixon v. Besco Engineering*, 320 S.C. 174, 178, 463 S.E.2d 636, 638 (Ct. App. 1995) (rule addressing setting aside entry of default for "good cause shown" should be Rule 55(c) should be "liberally construed to promote justice and dispose of cases on the merits"). The Commission's actions in this matter flaunt this important policy consideration.
- 4) Further, the Defendants' substantial due process rights to appeal the Hearing Commissioner's Order to the Full Commission are codified by statute- § 42-17-50. Indeed, it is well-established that the Full Commission, not the single commissioner, is the conclusive finder of fact in worker's compensation matters. As such, application of a mere regulation to deprive a party of a fundamental statutory right of appeal, and to have its case decided by the ultimate arbiter, must be scrutinized strictly. A regulation, although having the force of law, cannot be applied in a manner that thwarts a statutory right or purpose. *See Goodman v. City of Columbia*, 318 S.C. 488, 458 S.E.2d 531 (SC 1995) (holding that a regulation may not alter or add to a statute requirements).
- 5) Further, unlike the *jurisdictional* requirement that an appeal from an Order of the single commissioner to the Full Commission be filed with 14 Days,¹ the regulatory provision for administrative dismissal of an appeal for failure to file a brief is *discretionary*, not mandatory. WCC Regulation 67-707 merely states "the Judicial Department may remove the case from the review hearing docket." The Regulation's language providing for removal of the case from the "review hearing docket" merely connotes a temporary disposition until the administrative/procedural requirement of filing a Brief has been met. Hence the minimal "good cause" standard for reinstatement applies. To further the policy interests of insuring cases are decided on the merits, the Commission must apply the "good cause" standard for reinstatement of an administrative dismissal liberally in favor of the party seeking reinstatement.
- 6) In the instant case, Defendants clearly posited good cause for reinstatement of their Appeal to the review hearing docket in their original Motion. The Commission's reasoning for denying the Motion is unknown from the face of its form order, which Defendants submit in and of itself may be error. Presumably, the Commission may have singularly focused on the reasons for the Defendant's failure to file its Brief- a calendaring error within counsel's office. However, the Commission's inquiry should instead focus on the rationale for the reinstatement, not just the mistake resulting in the dismissal.

¹ Pursuant to S.C. Code §42-17-50 and WCC Regulation 67-701, a party has fourteen (14) days from notice of the Order to file an Appeal from the single commissioner's ruling to the Full Commission. The Regulation further provides that the time to Appeal to the Full Commission is a jurisdictional requirement- "[t]he fourteen-day period is *jurisdictional*." WCC Regulation 67-701 (emphasis added). *See also Allison v. W.L. Gore & Associates*, 394 S.C. 185, 714 S.E.2d 547 (SC 2011). It is an elementary matter of law that the statutory deadline to appeal a single commissioner's Order to the Full Commission is jurisdictional. Specifically, the Full Commission has absolutely no authority or discretion to extend the time to appeal for any reason whatsoever

- 7) The rationale for reinstatement here is simple- **OPPOSING COUNSEL DID NOT OPPOSE REINSTATEMENT!** Not only did Claimant's counsel not file a Return or otherwise reply to Defendants' Motion to Reinstate, defense counsel had a telephone conversation with Claimant's attorney before the filing of the Motion wherein he graciously extended the professional courtesy of promising not to object to reinstatement of the appeal. This courtesy is tantamount to an acknowledgement that Claimant has sustained no harm or prejudice as a result of Defendant's mistake in not timely filing their brief. Frankly, if implied consent of an opposing party does not constitute "good cause" for reinstatement, then it is hard to fathom what circumstances the Commission would deem to be good cause shown. In fact, there is no better cause for reinstatement than implied consent of an opposing party, regardless of the reason for the underlying administrative failure.
- 8) Again, it is elementary that parties cannot consent to jurisdictional matters; however, any fair application of a good cause standard for reinstatement of an administrative dismissal must give tremendous, if not conclusive, weight to an opposing parties acquiescence. *See WCC Regulation 67-705 (H)* (regulation providing for extension of time to file an Appellant's Brief via consent of the opposing party.) There is simply no logical distinction between a party's leave to consent to an extension of time for filing a brief and consent to reinstatement of an Appeal that has been administratively dismissed.
- 9) Further, the interests of judicial economy, as well as the interests of both parties in a full and timely adjudication of this matter, will be advanced by reinstatement of Defendant's Appeal. With essentially no party of interest opposing reinstatement in further proceedings before the Court of Appeals, it is a virtual certainty that that Court will find an abuse of discretion, or at least an unwarranted exercise of discretion, by the Commission's action and Order the Defendant's Appeal be placed back on the Commission's review hearing docket. This disposition by the Court of Appeals will take a minimum of 12 to 18 months. During that interim Claimant's entitlement to benefits under the Act will remain in limbo. On the other hand, an expeditious adjudication by the Commission can be made within 3 months. Prudence dictates that the course ensuring the most expeditious resolution of this matter should be followed, which is reinstatement of the Defendant's appeal forthwith.
- 10) Given the substantial due process rights and other interests implicated here, Defendants respectfully request the opportunity to be heard further on this matter, either via Hearing or Appearance before the Commission or at least the Chairman, or via a telephone conference between counsel and the Chairman.

WHEREFORE for all the aforementioned reasons, Defendants respectfully request that the Commission Reconsider and/or Rehear its April 16 Order denying their Motion to Reinstate the administrative dismissal of their Appeal. Upon further consideration and reflection Defendant's urge the Commission to reverse its Order and place Defendant's appeal back on the review hearing docket.

Respectfully submitted,



George D. Gallagher

**SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
JUDICIAL CONFERENCE DECISION AND ORDER**

**Veronica Rodriguez v Peggy Evers
SCWCC: 1619767
Commissioner: Campbell**

This matter was heard before the South Carolina Workers' Compensation Full Commission in Judicial Conference on a Motion to Reinstate. The Commissioners considered the matter and ordered the matter handled in the following manner:

IT IS, THEREFORE, ORDERED the pending appeal of the Administrative Order of the Commission is hereby;
 Dismissed as Interlocutory. Set for Oral Argument.

IT IS, THEREFORE, ORDERED the pending motion be, and hereby is;
 Granted. Denied. Dismissed Preserved for hearing

BEFORE THE;
 Hearing Comm. Jurisdictional Comm. Full Commission.

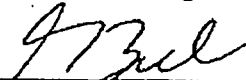
IT IS, THEREFORE, ORDERED this matter be, and hereby is; remanded to take such action and enter an Order consistent with the Court's directive.

Remand to Panel as indicated below.
 Barden James Taylor
 Beck Campbell Wilkerson
 McCaskill

Remand for Order consistent with the Order of the Court.
 Remand to the Hearing Commissioner.
 Remand to the Jurisdictional Commissioner.
 Other: _____

Remand: Panel Oral Argument. En Banc Oral Argument.

AND IT IS SO ORDERED.



 T. Scott Beck, Chair
 For the Commission

Columbia, South Carolina

4/14 2018

CONCURRING:	NOT PARTICIPATING:	DISSENTING:
Commissioner Susan S. Barden	_____	_____
Commissioner Melody James	_____	_____
Commissioner Aisha Taylor	_____	_____
Commissioner Avery Wilkerson	_____	_____
Commissioner Michael Campbell	<u>X</u> _____	_____
Commissioner Gene McCaskill	_____	_____

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY THE UNDERSIGNED HAS THIS DATE SERVED THIS ORDER IN THE ABOVE ENTITLED ACTION UPON ALL PARTIES ELECTRONICALLY OR BY DEPOSITING A COPY HEREOF, POSTAGE PAID, IN THE UNITED STATES MAIL

This 14 day of April, 2018.

By: Valencia D. Deller
 SCWCC Judicial Department

Smith v. Squires Timber Co., 311 S.C. 321, 428 S.E.2d 878 (1993) (noting the circumstances under which one can be an independent contractor and a statutory employee are very narrow).

4. Additionally, the Defendants moved to introduce new evidence for consideration by the Hearing Commissioner under S.C. Regulation 67-707.

5. The South Carolina Workers' Compensation Commission issued a Form 31 Briefing Schedule on February 16, 2018, with the Appellant's Brief due March 18, 2018, and oral argument on April 16, 2018. (March 18, 2018, was a Sunday, thus making the brief due on March 19, 2018).

6. The deadline for the Appellant's Brief was mis-calendared and was not docketed for March 18, 2018. Accordingly, that deadline passed without the Defendants' appeal being filed. Defendants' appeal was administratively dismissed on March 26, 2018.

7. Defendants filed this Motion to Reinstate the appeal on March 27, 2018.

8. Defendants would move to reinstate the appeal. Through a docketing error, the brief was not calendared correctly. However, the appeal was timely perfected and the Commissioner still has the jurisdiction and the discretion to reinstate the appeal.

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11. Defendants would submit that they have a meritorious defense both at law and factually—whether the Hearing Commissioner erred in its application of South Carolina Code section 42-1-400 and Smith v. Squires Timber Co., 311 S.C. 321, 428 S.E.2d 878 (1993) or whether the Hearing Commissioner was correct in applying the law set forth in Fortner v. Thomas M. Evans Constr. & Dev., L.L.C., 402 S.C. 421, 429, 741 S.E.2d 538, 543 (Ct. App. 2013). Moreover, the basis of the appeal goes to the whether the South Carolina Workers' Compensation has jurisdiction over the parties before it.

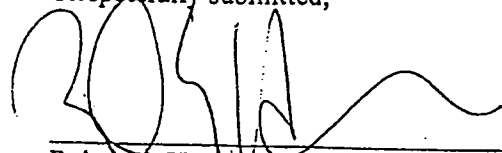
12. Public policy favors the disposition of cases “on their merits” Micronics, Inc. v. South Carolina Department of Revenue, 345 S.C. 506, 511, 548 S.E.2d 223, 226 (Ct. App. 2001). See also Dixon v. Besco Eng'g, 320 S.C. 174, 178, 463 S.E.2d 636, 638 (Ct. App. 1995) (rule addressing setting aside entry of default for “good cause shown” should be Rule 55(c) should be “liberally construed to promote justice and dispose of cases on the merits”). Defendants would contend that the appeal is meritorious and disposing of the case on the merits would serve the ends of justice.

13. Moreover, due to the very short passage of time that has occurred from the time the Appellant's Brief was due and the time this motion was filed, the Claimant has not suffered any prejudice and would not suffer any prejudice in having this case reinstated and the briefing schedule reinstated.

14. Finally, Defendants have consulted with the attorneys for the Claimant and they do not object to the reinstatement of this appeal.

Based upon the aforementioned, the Defendants would submit that “good cause” exists to reinstate their appeal and would respectfully request the Commission reinstate the appeal.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "R. Horne", written over a horizontal line.

Robert E. Horne, Esq.
Speed, Seta, Martin, Trivett, & Stublely
P.O. Box 11669
Columbia, South Carolina 29211
(803) 748-2919

Attorney for Defendants

March 27, 2018

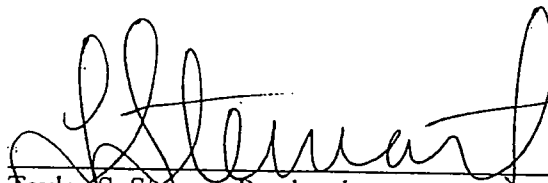
CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Motion to Reconsider has been served upon the following parties by placing a copy of the same in the United States mail, first class postage prepaid, addressed to the following as shown below on the 26th day of April, 2018.

Judicial Department
S.C. Worker's Compensation Commission
P.O. Box 1715
Columbia, SC 29202-1715

Don C. Gibson, Esquire
Gibson Law Firm
Post Office Box 60669
North Charleston, SC 29419

Stephen Samuels, Esquire
Samuels Law Firm
1320 Richland Street
Columbia, SC 29201



Taylor S. Stewart, Paralegal
Speed Seta Martin Trivett & Stublely, LLC
P.O. Box 11669
Columbia, SC 29211

Attorney for Defendants

STATE OF SOUTH CAROLINA
 BEFORE THE
 SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
 WCC FILE NO.: 1619767

Veronica Rodriguez,)	
)	
v.)	
)	
Peggy Evers,)	
)	
and)	<u>AMENDED MOTION TO</u>
)	<u>RECONSIDER AND/OR FOR</u>
)	<u>REHEARING</u>
)	
NorGuard Insurance Company,)	
)	
Carrier,)	
)	
Defendants.)	
)	

TO: THE SOUTH CAROLINA WORKERS COMPENSATION COMMISSION; STEPHEN SAMUELS, ESQ. AND DON C. GIBSON, ESQ., ATTORNEYS FOR CLAIMANT-

YOU WILL PLEASE TAKE NOTICE THAT pursuant to WCC Regulation 67-215, SCRCF 59 (e), and S.C. Code §1-23-380 (1), the Defendants in the above-captioned claim do hereby Move for the South Carolina Worker's Compensation Commission ("Commission") to Reconsider its form Order dated April 16, 2018 summarily denying the Defendant's Motion to Reinstate the Commission's administrative dismissal of their Appeal on the merits of the claim and/or for a Rehearing on same. This Motion is based on the following grounds:

- 1) Defendants timely filed a Motion to Reinstate their Appeal to Full Commission after it was administratively dismissed for failure to timely file an appellant's brief pursuant to WCC Regulation 67-705 (4). The Regulation specifically provides that "an appeal administratively dismissed by the Judicial Department may be reinstated for "good cause" upon motion to the Commission." (emphasis added).
- 2) Defendants' original Motion to Reinstate, which is incorporated herein by reference, sets forth the grounds constituting "good cause" for reinstatement in this case, including the fact opposing counsel for Claimant did not object to the reinstatement. Despite no opposition from Claimant's counsel, the Commission denied the Motion to Reinstate without explanation. Defendants respectfully submit this was legal error, an arbitrary and capricious abuse of discretion, and/or an unwarranted exercise of discretion. *See S.C. Code § 42-23-380 (5)* (the court may reverse or modify an agency's decision if substantial rights of a party have been prejudiced by an error of law, made upon unlawful procedure, and/or are otherwise arbitrary, capricious or characterized by an abuse

of discretion or clearly unwarranted exercise of discretion). Defendants urge the Commission to reconsider its ruling and enter a new Order reinstating the Defendants' Appeal on the merits.

- 3) Generally, the Commission's form Order denying Defendants' Motion to Reinstate violates fundamental notions of due process. Specifically, Defendants argue that an administrative dismissal for a technical failure to submit an appellate filing was not intended to be a primary means for summary disposition of cases pending before the Commission. Indeed, as noted in Defendants' original Motion, South Carolina law strongly favors disposition of cases on their merits, not technicalities or default. See Micronics v. S.C. Department of Revenue, 345 S.C. 506, 548 S.E.2d 223 (Ct. App. 2001); See also Dixon v. Besco Engineering, 320 S.C. 174, 178, 463 S.E.2d 636, 638 (Ct. App. 1995) (rule addressing setting aside entry of default for "good cause shown" should be Rule 55(c) should be "liberally construed to promote justice and dispose of cases on the merits"). The Commission's actions in this matter flaunt this important policy consideration.
- 4) Further, the Defendants' substantial due process rights to appeal the Hearing Commissioner's Order to the Full Commission are codified by statute- S.C. Code § 42-17-50. Indeed, it is well-established that the Full Commission, not the single commissioner, is the conclusive finder of fact in worker's compensation matters. As such, application of a mere regulation to deprive a party of a fundamental statutory right of appeal to the ultimate arbiter of the case must be scrutinized strictly. A regulation, although having the force of law, cannot be applied in a manner that thwarts a statutory right or purpose. See Goodman v. City of Columbia, 318 S.C. 488, 458 S.E.2d 531 (SC 1995) (holding that a regulation may not alter or add to a statute requirements).
- 5) Further, unlike the *jurisdictional* requirement that an appeal from an Order of the single commissioner to the Full Commission be filed with 14 Days,¹ the regulatory provision for administrative dismissal of an appeal for failure to file a brief is *discretionary*, not mandatory. WCC Regulation 67-707 merely states "the Judicial Department may remove the case from the review hearing docket." The Regulation's language providing for removal of the case from the "review hearing docket" merely connotes a temporary disposition until the administrative/procedural requirement of filing a Brief has been met. Hence the minimal "good cause" standard for reinstatement applies. To further the policy interests of insuring cases are decided on the merits, the Commission must apply the "good cause" standard for reinstatement of an administrative dismissal liberally in favor of the party seeking reinstatement.
- 6) In the instant case, Defendants clearly posited good cause for reinstatement of their Appeal to the review hearing docket in their original Motion. The Commission's reasoning for denying the Motion is unknown from the face of its form order, which Defendants submit in and of itself may be error. Presumably, the Commission may have singularly focused on the reasons for the Defendant's failure to file its Brief- a calendaring error within counsel's office. However, the Commission's inquiry should instead focus on the rationale for the reinstatement, not just the mistake resulting in the dismissal.

¹ Pursuant to S.C. Code §42-17-50 and WCC Regulation 67-701, a party has fourteen (14) days from notice of the Order to file an Appeal from the single commissioner's ruling to the Full Commission. The Regulation further provides that the time to Appeal to the Full Commission is a jurisdictional requirement- "[t]he fourteen-day period is *jurisdictional*." WCC Regulation 67-701 (emphasis added). See also Allison v. W.L. Gore & Associates, 394 S.C. 185, 714 S.E.2d 547 (SC 2011). It is an elementary matter of law that the statutory deadline to appeal a single commissioner's Order to the Full Commission is jurisdictional. Specifically, the Full Commission has absolutely no authority or discretion to extend the time to appeal for any reason whatsoever.

SCWCC

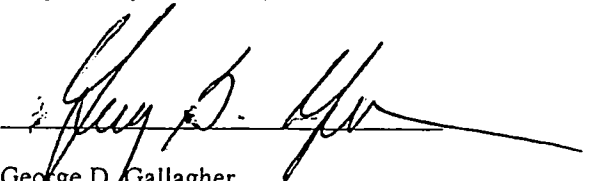
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JUDICIAL

- 7) The rationale for reinstatement here is simple- Claimant has suffered no immediate prejudice as a result of Defendants' mistake in not timely filing their Brief. Whether the Brief was filed when purportedly due per the Commission's Notice, or whether it was filed after any reinstatement of the Appeal, Claimant's position is *status quo*- she will still have the same right and opportunity to Respond and be heard on the merits of the case. Defendant's submit this constitutes "good cause" for reinstatement of their Appeal.
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- 9) Further, the interests of judicial economy, as well as the interests of both parties in a full and timely adjudication of this matter, will be advanced by reinstatement of Defendant's Appeal. With essentially no party of interest opposing reinstatement in further proceedings before the Court of Appeals, it is a virtual certainty that the Court will find an abuse of discretion, or at least an unwarranted exercise of discretion, by the Commission's action and Order the Defendant's Appeal be placed back on the Commission's review hearing docket. This disposition by the Court of Appeals will take a minimum of 12 to 18 months. During that interim Claimant's entitlement to benefits under the Act will remain in limbo. On the other hand, an expeditious adjudication by the Commission can be made within 3 months. Prudence dictates that the course ensuring the most expeditious resolution of this matter should be followed, which is reinstatement of the Defendant's appeal forthwith.
- 10) Given the substantial due process rights and other interests implicated here, Defendants respectfully request the opportunity to be heard further on this matter, either via Hearing or Appearance before the Commission or at least the Chairman, or via a telephone conference between counsel and the Chairman.

WHEREFORE for all the aforementioned reasons, Defendants respectfully request that the Commission Reconsider and/or Rehear its April 16 Order denying their Motion to Reinstate the administrative dismissal of their Appeal. Upon further consideration and reflection, Defendant's urge the Commission to reverse its Order and place Defendant's appeal back on the review hearing docket.

Respectfully submitted,


George D. Gallagher
Attorney for Defendants

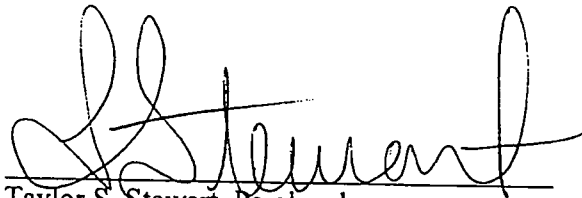
CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Motion to Reconsider has been served upon the following parties by placing a copy of the same in the United States mail, first class postage prepaid, addressed to the following as shown below on the 4th day of May, 2018.

Judicial Department
S.C. Worker's Compensation Commission
P.O. Box 1715
Columbia, SC 29202-1715

Don C. Gibson, Esquire
Gibson Law Firm
Post Office Box 60669
North Charleston, SC 29419

Stephen Samuels, Esquire
Samuels Law Firm
1320 Richland Street
Columbia, SC 29201



Taylor S. Stewart, Paralegal
Speed Seta Martin Trivett & Stublely, LLC
P.O. Box 11669
Columbia, SC 29211

Attorney for Defendants

SCWCC
MAY 07 2018
JUDICIAL

GIBSON LAW FIRM, LLC

Attorney Don C. Gibson
Telephone: (843) 744-1887
Facsimile: (843) 744-5320
Toll Free: (866) 744-1887

STREET ADDRESS:
5422 Rivers Avenue
North Charleston, SC 29406

WEBSITE:
www.dgibsonlaw.com

May 7, 2018

Via First Class Mail

Workers' Compensation Commission
Amy Bracy
P.O. Box 1715
Columbia, SC 29202-1715

Re: Client: Veronica Rodriguez Texacahua
Date of Injury: December 5, 2016
Employer: Cleaner Concepts
Carrier: NorGuard Ins. Co.
Carrier Claim No.: PEWC734403001
WCC File No.: 1619767

Dear Ms. Bracy:

In connection with the above-captioned matter, enclosed please find three (3) original on my Return of Respondent to Motion for Reconsideration for filing.

By copy of this letter, I am providing a copy of same to all Attorneys of record for defendant LGJ Construction, LLC and Norguard Insurance Company as required by the Rules and Regulations of this Commission.

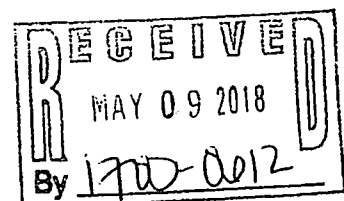
I have an unusual problem at present in that attorney Stephen Samuels was employed by me to do the appeal work in this case. Do to certain problems that have arisen, I am terminating his involvement in this case and am sending to you my Return to Motion for Reconsideration as it is due today. I have written an email to Mr. Stephens informing him that he is being removed from the case. I would appreciate it if you would allow me a five (5) day extension to file and Amended Return to Motion for Reconsideration as this one is being hastily prepared in light of my present unusual circumstances. I would appreciate it if the Commission would allow me adequate time to fully respond and hope they will refrain from making a decision until such time as my amended brief has been received.

Thank you again for your kind assistance in this matter.

With kindest regards, I remain,

Sincerely yours,

Don C. Gibson, Esquire



DCG:djk

Enclosure: as stated.

cc: Stephen Benjamin Samuels, Esquire

STATE OF SOUTH CAROLINA, COUNTY OF CHARLESTON
BEFORE THE WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NUMBER: 1619767

VERONICA RODRIGUEZ,)
)
 Claimant/Employee,)
)
 vs.)
)
 PEGGY EVERS,)
)
 Employer,)
)
 and,)
)
 NORGUARD INS. CO)
)
 Carrier/Defendants.)
)

RETURN OF RESPONDENT
TO MOTION FOR RECONSIDERATION

General Argument-Motion fatally defective

The Motion for Reconsideration is fatally defective. The motion is based on alleged facts outside the record of the Commission. Regulation 67-215 D. (1) mandates that where the motion is based upon facts outside the record of the Commission that the moving party SHALL file an "affidavit evidencing those facts". The motion contains no affidavits. Therefore the motion is fatally defective on its face and the motion should be denied.

Further, the motion is fatally defective because there is no rule to allow for a motion to reconsider a Motion to Reinstate.

STATEMENT OF THE CASE

The Single Commissioner found for Veronica Rodriguez, the Claimant and Respondent in this case ("the Respondent"), Norguard Ins. Co., Inc., the Employer and Appellant in this matter. Norguard Ins. Co. then filed an appeal of that decision to the full Commission. Norguard Ins. Co. failed, however, to file a brief in support of that appeal as required by WCC Reg. 67-705(4). Accordingly the appeal was dismissed.

A motion to reinstate the appeal was denied. Norguard Ins. Co. has now filed a motion asking the Commission to reconsider its dismissal and to reinstate the appeal. Norguard Ins. Co. has failed, however, to establish the "good cause" required by the Regulation for the dismissal of the appeal to be reconsidered. Accordingly, the motion must be overruled.

QUESTION PRESENTED

Did Norguard Ins. Co. demonstrate the "good cause" required under WCC Regulation 67-705(4) to support its motion?

CONCLUSION

Norguard Ins. Co. did not offer any legally relevant evidence of "good cause" to support its motion. The evidence it did proffer has no relevance to the issue at hand. Hence, Norguard Ins. Co.'s motion must be overruled.

ARGUMENT

Norguard Ins. Co. argument is that "opposing counsel for Claimant did not object to the reinstatement" (Motion to Reconsider ¶ 2). This argument fails on multiple grounds. First, the requirement that a brief be filed is set out in the Regulations; it is not a matter of the whim of the attorneys for the appellant. Moreover, while it is true that the decision to dismiss an appeal is discretionary with the Commission, the decision whether or not to file a brief in support of that appeal is not. Thus, any statement by an attorney that he would not object if Norguard Ins. Co. did

not file a brief in support of its appeal would be ineffective. The statement was meaningless in the context of the conduct of this case.

Second, for this argument to constitute "good cause" the Regulation would have to be construed as delegating the disposition of the motion to the Claimant's attorneys in the case, even though

the statement ostensibly supporting acquiescence in the failure to file a brief was made by one of the attorneys of record for the Claimant. This cannot be the law.

Third, Norguard Ins. Co. argues that denying reinstatement of the appeal would be contrary to "the interests of judicial economy, as well as the interests of both parties to a full and timely adjudication of this matter, will be advanced by the reinstatement of Defendant's Appeal" (Motion to Reconsider ¶ 9)(emphasis in the original). These two asserted justifications are false on their face. Judicial economy will be thwarted if this case is allowed to drag on instead of being treated as already decided. In addition it is difficult to see how the Claimant's interests would be advanced by a reinstatement of the appeal. The Claimant has already won on the subject matter of the appeal. How would a redo benefit him?

The justification actually offered by Norguard Ins. Co., for the untimely filing of its brief, "a calendaring error within counsel's office" (Motion to Reconsider ¶ 6), does not support its motion. Norguard Ins. Co. does not explain how the "calendaring error" took place, what steps if any were taken to remedy the situation before the dismissal of the appeals was entered, or what safeguards in its calendaring process are designed to prevent such "a calendaring error" from occurring.


CONCLUSION

For the reasons set out above, claimant/respondent Veronica Rodriguez respectfully asks the Commission's appellate panel to deny the Motion..

Respectfully submitted,

VERONICA RODRIGUEZ

By counsel



DON C. GIBSON, ESQUIRE
Gibson Law Firm, LLC
5422 Rivers Avenue
North Charleston, SC 29406
(843) 744-1887
Fax: (843) 744-5320

Attorney for the Claimant/Respondent

North Charleston, South Carolina

May 7, 2018

STATE OF SOUTH CAROLINA
BEFORE THE WORKERS' COMPENSATION COMMISSION
W. C. C. FILE #: 1619767

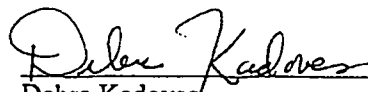
VERONICA RODRIGUEZ,)
)
Claimant/Employee)
)
vs.)
)
CLEANER CONCEPTS,) CERTIFICATE OF SERVICE
)
Employer,)
)
)
NORGUARD INS. CO.,)
)
Carrier.)
_____)

THIS IS TO CERTIFY that I, Debra Kadoves the undersigned, have this date served upon the attorneys for the Employer/Carrier in the above referenced case the below listed documents by placing copies of same in the United States Mail, with adequate postage affixed and served on the attorneys as follows:

Via First Class Mail
Ms. Amy Bracy, Judicial Director
SC Workers' Compensation Commission
PO Box 1715
Columbia, SC 29201

Robert Horner, Esquire and M. Stephen Stublely, Esquire
Speed, Seta, Martin, Trivett & Stublely, LLC
P.O. Box 11669
Columbia, SC 29211

May 7, 2018
North Charleston, SC 29406



Debra Kadoves,
Paralegal to Don C. Gibson, Esquire

Document: RETURN OF RESPONDENT

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

T. Scott Beck, Commissioner

SCWCC File No. 1619767

Veronica Rodriguez, Claimant.....Respondent

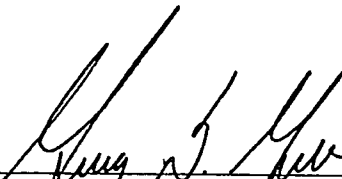
v.

Peggy Evers, Employer and NorGuard Insurance Company,
Carrier.....Appellants

NOTICE OF APPEAL

Peggy Evers and NorGuard Insurance Company hereby appeal the FINAL Decision and Order of the Honorable T. Scott Beck, Chairman of the Worker's Compensation Commission, dated May 21, 2018. Appellants received written notice of entry of this order on May 22, 2018.

June 12, 2018


George D. Gallagher, Esq.
Speed Seta Martin Trivett & Stublely, LLC
P.O. Box 11669
Columbia, SC 29211
S.C. Bar # 12149

Attorney for Appellants

Other Counsel of Record:

Don C. Gibson, Esquire
Gibson Law Firm
Post Office Box 60669
North Charleston, SC 29419

Stephen Samuels, Esquire
Samuels Law Firm
1320 Richland Street
Columbia, SC 29201

Attorneys for Respondent

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
JUDICIAL CONFERENCE DECISION AND ORDER

Veronica Rodriguez v Peggy Evers
SCWCC: 1619767
Commissioner: Campbell

This matter was heard before the South Carolina Workers' Compensation Full Commission in Judicial Conference on a **Motion to Reinstate**. The Commissioners considered the matter and ordered the matter handled in the following manner:

IT IS, THEREFORE, ORDERED the pending appeal of the Administrative Order of the Commission is hereby;
 Dismissed as Interlocutory. Set for Oral Argument.

IT IS, THEREFORE, ORDERED the pending motion be, and hereby is;
 Granted. Denied. Dismissed Preserved for hearing

BEFORE THE;
 Hearing Comm. Jurisdictional Comm. Full Commission.

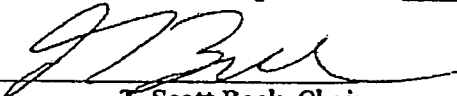
IT IS, THEREFORE, ORDERED this matter be, and hereby is; remanded to take such action and enter an Order consistent with the Court's directive.

Remand to Panel as indicated below.
 Barden James Taylor
 Beck Campbell Wilkerson
 McCaskill

Remand for Order consistent with the Order of the Court.
 Remand to the Hearing Commissioner.
 Remand to the Jurisdictional Commissioner.
 Other: _____

Remand: Panel Oral Argument. En Banc Oral Argument.

AND IT IS SO ORDERED.


T. Scott Beck, Chair
For the Commission

Columbia, South Carolina

5/21 2018

CONCURRING:	NOT PARTICIPATING:	DISSENTING:
Commissioner Susan S. Barden	_____	_____
Commissioner Melody James	_____	_____
Commissioner Aisha Taylor	_____	_____
Commissioner Avery Wilkerson	_____	_____
Commissioner Michael Campbell	<u> x </u>	_____
Commissioner Gene McCaskill	_____	_____

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY THE UNDERSIGNED HAS THIS DATE SERVED THIS ORDER IN THE ABOVE ENTITLED ACTION UPON ALL PARTIES ELECTRONICALLY OR BY DEPOSITING A COPYHEREOF, POSTAGE PAID, IN THE UNITED STATES MAIL

This 21 day of May, 2018.
 By: Valerie D. Deller
 SCWCC Judicial Department

SPEED, SETA, MARTIN, TRIVETT & STUBLEY, LLC
ATTORNEYS AT LAW

WALLACE SPEED (GA & TN)
LESLI R. SETA (GA & FL)
SETH C. MARTIN (GA & FL)
ERIC L. TRIVETT (GA)
M. STEPHEN STUBLEY (SC)
STEPHANIE A. ROCKWELL (GA & TN)
JAMES E.L. FICKLING (SC & NC)

REPLY TO
P.O. BOX 11669
COLUMBIA, SOUTH CAROLINA 29211
PHONE (803) 748-2919
FAX (803) 748-2735
www.Speed-Seta.com

ALEXANDER ADKINS (GA & TN)
HUNTER CHANDLER (GA & TN)
MELISSA CRUZ (GA)
JEREMY T. ENGLAND (AL & MS)
C. BENTON HILBURN (GA)
K. SHAYDA KAYHANI (GA & FL)
JASON A. LANAHAN (GA)
MOLLY K. MARTIN (GA)
ANDREA S. OWEN (GA)
TRACEY R. PERLMAN (SC)
DAMIEN REES (GA)
BRITTANY SCHWANITZ (GA)
BRITTANY BELL TURNER (GA & FL)
LILY D. WILKERSON (GA & FL)

May 4, 2018

Judicial Department
ATTN: Amy Bracy
S.C. Worker's Compensation Commission
P.O. Box 1715
Columbia, SC 29202-1715

GEORGE D. GALLAGHER (SC), of counsel
ROBERT E. HORNER (SC & NC), of counsel

RE: *Veronica Rodriguez v. Peggy Evers*
WCC No.: 1619767
Claim No.: PEWC734403-001
DOA: 12/5/16
Our File No.: 1700-0612

Dear Director Bracy:

Enclosed for filing please find the Defendants' **AMENDED** Motion to Reconsider and/or for Rehearing in the above-referenced matter. We request that the Commission disregard and discard the original Motion previously filed. Defendants intend to rely on the information and grounds set forth in the **AMENDED** version for all purposes before the Commission.

By copy of this letter, I am serving a copy of this motion on Stephen Samuels and Don C. Gibson, counsel for the claimant. Counsel for the parties would still respectfully request a telephone conference with the Chairman to discuss this matter further as soon as possible.

Thank you for your assistance in this matter.

Sincerely,



George D. Gallagher

GDG/tss

Speed, Seta, Martin, Trivett, & Stubley, LLC

GDG/tss

cc: Don Gibson, Esquire (w/encl)
Stephen Samuels, Esquire (w/encl.)
Amy Klatt (w/encl)

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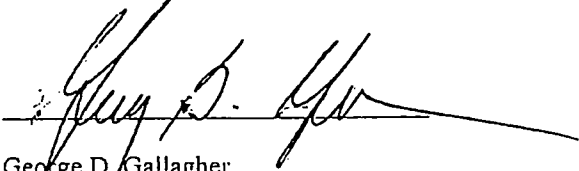
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George D. Gallagher
Attorney for Defendants

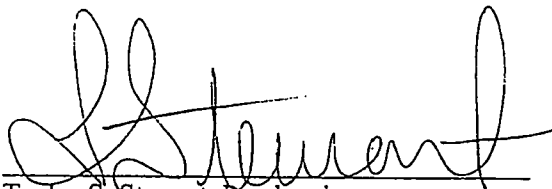
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Judicial Department
S.C. Worker's Compensation Commission
P.O. Box 1715
Columbia, SC 29202-1715

Don C. Gibson, Esquire
Gibson Law Firm
Post Office Box 60669
North Charleston, SC 29419

Stephen Samuels, Esquire
Samuels Law Firm
1320 Richland Street
Columbia, SC 29201

A handwritten signature in black ink, appearing to read "T. Stewart", written over a horizontal line.

Taylor S. Stewart, Paralegal
Speed Seta Martin Trivett & Stublely, LLC
P.O. Box 11669
Columbia, SC 29211

Attorney for Defendants

**SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
JUDICIAL CONFERENCE DECISION AND ORDER**

**Veronica Rodriguez v Peggy Evers
SCWCC: 1619767
Commissioner: Campbell**

This matter was heard before the South Carolina Workers' Compensation Full Commission in Judicial Conference on a **Motion to Reinstate**. The Commissioners considered the matter and ordered the matter handled in the following manner:

IT IS, THEREFORE, ORDERED the pending appeal of the Administrative Order of the Commission is hereby;
 Dismissed as Interlocutory. Set for Oral Argument.

IT IS, THEREFORE, ORDERED the pending motion be, and hereby is;
 Granted. Denied. Dismissed Preserved for hearing

BEFORE THE;
 Hearing Comm. Jurisdictional Comm. Full Commission.

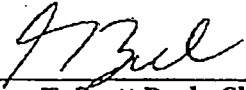
IT IS, THEREFORE, ORDERED this matter be, and hereby is; remanded to take such action and enter an Order consistent with the Court's directive.

Remand to Panel as indicated below.
 Barden James Taylor
 Beck Campbell Wilkerson
 McCaskill

Remand for Order consistent with the Order of the Court.
 Remand to the Hearing Commissioner.
 Remand to the Jurisdictional Commissioner.
 Other: _____

Remand: Panel Oral Argument. En Banc Oral Argument.

AND IT IS SO ORDERED.



**T. Scott Beck, Chair
For the Commission**

Columbia, South Carolina

4/14 2018

CONCURRING:	NOT PARTICIPATING:	DISSENTING:
Commissioner Susan S. Barden	_____	_____
Commissioner Melody James	_____	_____
Commissioner Aisha Taylor	_____	_____
Commissioner Avery Wilkerson	_____	_____
Commissioner Michael Campbell	<u>K</u>	_____
Commissioner Gene McCaskill	_____	_____

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY THE UNDERSIGNED HAS THIS DATE SERVED THIS ORDER IN THE ABOVE ENTITLED ACTION UPON ALL PARTIES ELECTRONICALLY OR BY DEPOSITING A COPY HEREOF, POSTAGE PAID, IN THE UNITED STATES MAIL

This 16 day of April, 2018.

By: Valerie D. Deller
 SCWCC Judicial Department

SPEED, SETA, MARTIN, TRIVETT & STUBLEY, LLC
ATTORNEYS AT LAW

WALLACE SPEED (GA & TN)
LESLI R. SETA (GA & FL)
SETH C. MARTIN (GA & FL)
ERIC L. TRIVETT (GA)
M. STEPHEN STUBLEY (SC)
STEPHANIE A. ROCKWELL (GA & TN)
JAMES E.L. FICKLING (SC & NC)

REPLY TO
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C. BENTON HILBURN (GA)
K. SHAYDA KAYHANI (GA & FL)
JASON A. LANAHAN (GA)
MOLLY K. MARTIN (GA)
ANDREA S. OWEN (GA)
TRACEY R. PERLMAN (SC)
DAMIEN REES (GA)
BRITTANY SCHWANITZ (GA)
BRITTANY BELL TURNER (GA & FL)
LILY D. WILKERSON (GA & FL)

March 27, 2018

GEORGE D. GALLAGHER (SC), of counsel
ROBERT E. HORNER (SC & NC), of counsel

Via Hand Delivery

S.C. Worker's Compensation Commission
P.O. Box 1715
Columbia, SC 29202-1715

RE: *Veronica Rodriguez v. Peggy Evers*
WCC No.: 1619767
Claim No.: PEWC734403-001
DOA: 12/5/16
Our File No.: 1700-0612

To Whom it May Concern:

Enclosed for filing are the original and three copies of a Motion to Reinstate Appeal in the above case. Also enclosed are the following:

- 1) Proof of Service of the Motion to Reinstate Appeal;
- 2) A filing fee of \$25.00.

I would appreciate very much if you would file the notice and return the copy to our courier. By copy of this letter, I am serving the Notice upon all counsel of record.

Sincerely,



Robert E. Horner

REH/tss

Enclosures

cc: Don Gibson, Esquire
Stephen Samuels, Esquire
Dean Coman

STATE OF SOUTH CAROLINA
BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO.: 1619767

Veronica Rodriguez,)
)
 Claimant,)
 v.)
)
 Peggy Evers,)
)
 Employer,)
)
 and)
)
 NorGuard Insurance Company,)
)
)
 Carrier,)
)
)
 Defendants.)
)

MOTION TO REINSTATE APPEAL
PURSUANT TO SC REG. 67-705

Defendants Peggy Evers and NorGuard Insurance Company hereby file this Motion to Reinstate Defendant's Appeal pursuant to South Carolina Regulation 67-705.

1. The Defendants appealed this matter following a Hearing before the Hearing Commissioner which was held on November 3, 2017. The Order of the Hearing Commissioner was issued on January 5, 2018.

2. The main issue before the Hearing Commissioner was whether the Claimant was an employee or an independent contractor. The Hearing Commissioner determined that the Claimant was an independent contractor but then held that the Claimant was a statutory employee of the Defendant Peggy Evers.

3. The Defendants timely filed a Form 30 application for appellate review asserting numerous grounds for appeal but first and foremost argued that the Hearing Commissioner erred in finding the Claimant was a statutory employee under South Carolina Code section 42-1-400 and

Smith v. Squires Timber Co., 311 S.C. 321, 428 S.E.2d 878 (1993) (noting the circumstances under which one can be an independent contractor and a statutory employee are very narrow).

4. Additionally, the Defendants moved to introduce new evidence for consideration by the Hearing Commissioner under S.C. Regulation 67-707.

5. The South Carolina Workers' Compensation Commission issued a Form 31 Briefing Schedule on February 16, 2018, with the Appellant's Brief due March 18, 2018, and oral argument on April 16, 2018. (March 18, 2018, was a Sunday, thus making the brief due on March 19, 2018).

6. The deadline for the Appellant's Brief was mis-calendared and was not docketed for March 18, 2018. Accordingly, that deadline passed without the Defendants' appeal being filed. Defendants' appeal was administratively dismissed on March 26, 2018.

7. Defendants filed this Motion to Reinstate the appeal on March 27, 2018.

8. Defendants would move to reinstate the appeal. Through a docketing error, the brief was not calendared correctly. However, the appeal was timely perfected and the Commissioner still has the jurisdiction and the discretion to reinstate the appeal.

9. Under South Carolina Regulation 67-705, an appeal may be reinstated for "good cause." By analogy to the Rules of Civil Procedure (and more specifically Rule 55), in determining good cause, a judge should consider: (1) the timing of the motion for relief; (2) whether the defendant has a meritorious defense; and (3) the degree of prejudice to the plaintiff if relief is granted.

10. The timing of the motion for relief weighs in favor of the Defendants, as the Motion to Reinstate was filed within 24 hours of receiving the administrative dismissal and within 8 days of the day the appellant's brief was due.

11. Defendants would submit that they have a meritorious defense both at law and factually—whether the Hearing Commissioner erred in its application of South Carolina Code section 42-1-400 and Smith v. Squires Timber Co., 311 S.C. 321, 428 S.E.2d 878 (1993) or whether the Hearing Commissioner was correct in applying the law set forth in Fortner v. Thomas M. Evans Constr. & Dev., L.L.C., 402 S.C. 421, 429, 741 S.E.2d 538, 543 (Ct. App. 2013). Moreover, the basis of the appeal goes to the whether the South Carolina Workers' Compensation has jurisdiction over the parties before it.

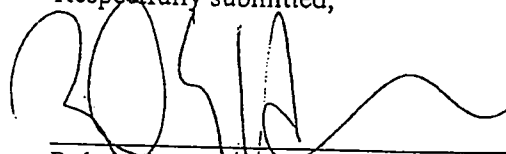
12. Public policy favors the disposition of cases “on their merits” Micronics, Inc. v. South Carolina Department of Revenue, 345 S.C. 506, 511, 548 S.E.2d 223, 226 (Ct. App. 2001). See also Dixon v. Besco Eng'g, 320 S.C. 174, 178, 463 S.E.2d 636, 638 (Ct. App. 1995) (rule addressing setting aside entry of default for “good cause shown” should be Rule 55(c) should be “liberally construed to promote justice and dispose of cases on the merits”). Defendants would contend that the appeal is meritorious and disposing of the case on the merits would serve the ends of justice.

13. Moreover, due to the very short passage of time that has occurred from the time the Appellant's Brief was due and the time this motion was filed, the Claimant has not suffered any prejudice and would not suffer any prejudice in having this case reinstated and the briefing schedule reinstated.

14. Finally, Defendants have consulted with the attorneys for the Claimant and they do not object to the reinstatement of this appeal.

Based upon the aforementioned, the Defendants would submit that “good cause” exists to reinstate their appeal and would respectfully request the Commission reinstate the appeal.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R. Florick', written over a horizontal line.

Robert E. Florick, Esq.
Speed, Seta, Martin, Trivett, & Stublely
P.O. Box 11669
Columbia, South Carolina 29211
(803) 748-2919

Attorney for Defendants

March 27, 2018

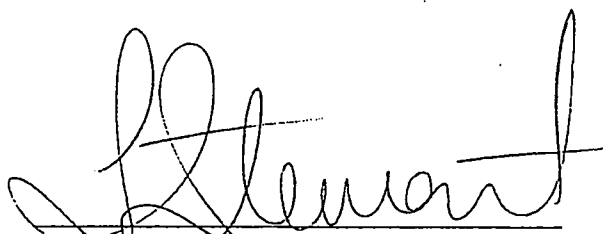
CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Motion to Reinstate Appeal, has been served upon the following parties by placing a copy of the same in the United States mail, first class postage prepaid, addressed to the following as shown below on the 27th day of March, 2018.

S.C. Workers' Compensation Commission
Post Office Box 1715
Columbia, SC 29202

Don C. Gibson, Esquire
Gibson Law Firm
Post Office Box 60669
North Charleston, SC 29419

Stephen Samuels, Esquire
Samuels Law Firm
1320 Richland Street
Columbia, SC 29201



Taylor S. Stewart, Paralegal
Speed, Seta, Martin, Trivett & Stublely, LLC
PO Box 11669
Columbia, SC 29211
(803) 748-2919

Attorneys for Defendants

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

T. Scott Beck, Commissioner

SCWCC File No. 1619767

Veronica Rodriguez, Claimant.....Respondent

v.

Peggy Evers, Employer and NorGuard Insurance Company,
Carrier.....Appellants

PROOF OF SERVICE

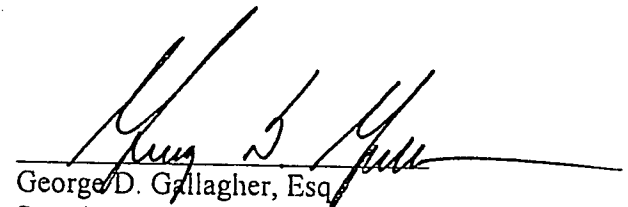
I certify that I have served the Notice of Appeal on the attorney of record for Veronica Rodriguez t as well as the South Carolina Workers' Compensation Commission by depositing a copy of it in the United States Mail, postage prepaid, on June 12, 2018, addressed as follows:

Don C. Gibson, Esquire
Gibson Law Firm
Post Office Box 60669
North Charleston, SC 29419

Stephen Samuels, Esquire
Samuels Law Firm
1320 Richland Street
Columbia, SC 29201

The Honorable Amy Bracy, Judicial Director
S.C. Workers' Compensation Commission
1333 Main Street, Ste. 500
Columbia, SC 29201

June 12, 2018

A handwritten signature in black ink, appearing to read "George D. Gallagher", is written over a horizontal line.

George D. Gallagher, Esq.
Speed Seta Martin Trivett & Stublely, LLC
P.O. Box 11669
Columbia, SC 29211
S.C. Bar # 12149

Attorney for Appellants

STATE OF SOUTH CAROLINA
In the Court of Appeal

APPEAL FROM THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

T. Scott Beck, Commissioner

SCWCC File No. 1619767

Appellate Case No. 2018-001111

RECEIVED
SEP 18 2018
SC Court of Appeals

Veronica Rodriguez, Employee.....Respondent

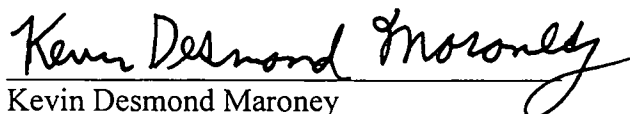
v.

Peggy Evers, Employer and NorGuard Insurance Company Carrier.....Appellants

CERTIFICATE OF COUNSEL

Pursuant to Rule 210(c) of the South Carolina Rules of Appellate Procedure, I certify that the Record on Appeal only contains matter that was presented at the lower court or tribunal. Additionally, pursuant to Rule 209(c), I certify that the Record does not contain matter which is irrelevant to the appeal. Furthermore, and with the exception of certain documents designated by Appellant which was not considered by the lower court or tribunal, I also certify that the Record contains all material proposed to be included by any of the other parties and not any other material.

September 12, 2018



Kevin Desmond Maroney

Bar No. 102545

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803.748.2309

kmaroney@speed-seta.com