

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

RECEIVED

MAR 20 2020

Appeal No. 2019-001361

SC Court of Appeals

Courtney Ray Mitchell, Employee,Appellant,

v.

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

**RETURN IN OPPOSITION TO
APPELLANT'S MOTION TO STRIKE ITEM FROM
DESIGNATION OF MATTER**

Pursuant to Rules 209, 210 and 240, SCACR, Respondents United Parcel Service and Liberty Mutual hereby oppose Courtney Ray Mitchell's Appellant's Motion to Strike Item from Designation of Matter ("Motion to Strike"). Appellant argues that Item No. 14 should be stricken pursuant to Rule 210(c), SCACR, because he believes that portion of the record below is irrelevant. Furthermore, Appellant suggests the sole purpose of designating Item No. 14 is "to taint the Court's opinion of Appellant; and more importantly, take the focus away from the sole issue before the Court." Because neither argument has any validity, this Court should deny Appellant's Motion to Strike in its entirety.

To begin with, Rule 210(c) mandates that "[t]he Record on Appeal shall include all matter designated to be included by any party under Rule 209," with the only

exception being that the Record on Appeal “shall not ... include matter which was not presented to the lower court or tribunal.” Rule 210(c), SCACR. Appellant does not and cannot legitimately allege that the portions of his own workers’ compensation deposition transcript listed in Item No. 14 were not presented to the South Carolina Workers’ Compensation Commission in this case. (See Exh. A at p. 5, portion of Single Commissioner Decision & Order listing the “Deposition of Courtney Ray Mitchell” as part of Defendants’ APA Submissions submitted into evidence). Therefore, Rule 210(c) does not provide any basis for striking Item No. 14 from the Record on Appeal.

Moreover, while Rule 209(b), SCACR, indicates that a “party shall not include any matter in his Designation which is not relevant to the appeal,” Appellant’s argument that the designated portions of his deposition testimony are not relevant to this appeal rings hollow and does not support his Motion to Strike. Appellant’s argument would be more persuasive if his own initial Brief did not consist of six pages of “Statement of Facts” that disparage UPS as an employer and paint an unrealistically sympathetic picture of Appellant. Indeed, his argument as to the timeliness of the brief he allegedly filed with the South Carolina Workers’ Compensation Commission comprises only slightly more than one full page.

In addition, Appellant designated selected portions of the transcript of the November 2, 2018 hearing before Commissioner T. Scott Beck, including the following pages:

- 23 (Appellant explaining that he did not file a claim for workers compensation while working for UPS but, instead, filed for short term disability for his back and hands),
- 28 (Appellant testifying that his job performance caused him stress),

- 31 (Appellant testifying about his diagnosis with bipolar personality disorder and arrest in Kentucky for “a CDV”),
- 36-37 (Appellant testifying that he told UPS about the effects his job was having on him and that his “mental state from this 2013 issue” was much worse than prior mental health issues he had had), and
- 47-49 (Appellant testifying about his commitment to Patrick B. Harris in 2006 and subsequent treatment at Abbeville Mental Health and acknowledging that he was not always compliant with treatment).

Appellant also designated the following APA pages:

- 84 (assessment by Velma Jones of Appellant’s job performance),
- 120-121 (excerpt from Michael Battista’s deposition discussing Appellant’s job performance, a portion of which is quoted in Appellant’s Brief at p. 3),
- 132-133 (excerpt from Michael Battista’s deposition discussing Appellant going on disability and texts Appellant sent Mr. Battista following the June 21, 2013 lunch),
- 152 (excerpt from Scott Brown’s deposition discussing events surrounding the June 21, 2013 lunch),
- 284-285 (excerpt from Michael Leonard’s deposition discussing a nickname – “Shots Fired” – that some employees used for Appellant), and
- 746 (excerpt from Velma Jones’ deposition acknowledging that Appellant had been “salesman of the month three months in a row”).

These pages are no more or less relevant to the “sole issue on appeal” than are the select pages of Appellant’s workers’ compensation deposition that Respondents have designated. For example, Respondents have designated the following pages from Appellant’s deposition transcript:

- 7 (Appellant testifying he has been married twice and has a young son),

- 9-13 (Appellant testifying he served in the National Guard but not the U.S. Army, and about his conviction in Kentucky, his then-pending charge for assault in the correctional facility, and a pending weapons charge in Anderson County),
- 22-28 (Appellant testifying about his prior employment history),
- 41-54 (Appellant testifying about being placed on trespass notice at Easley Baptist, his commitment at Patrick B. Harris, subsequent treatment at Abbeville Mental Health and subsequent employment),
- 72 (Appellant testifying that he was at Three Rivers Behavioral Health for a couple of months for treatment after leaving UPS),
- 86 (Appellant testifying that he went to lunch with some UPS employees on June 21, 2013),
- 88-89 (same as p. 72, see above), and
- 103-104 (Appellant testifying about the text messages and trespass notices he sent to various UPS employees).

These designated pages are at least as relevant to this appeal as the pages designated by Appellant, none of which are intended to “taint the Court’s opinion” or distract the Court from the sole issue before it.

Instead, Respondents suspect that, because they were unable to provide Appellant with a full-size version of the transcript of his deposition, he has made the choice to move to strike the designated pages rather than to order them directly from the court reporter or to seek this Court’s permission to file a condensed version of the relevant pages. On March 5, 2020, Mr. Smith’s office contacted counsel for Respondents asking for copies of certain APA submissions as well as a copy of Appellant’s deposition transcript. Respondents provided copies of the requested APA submission pages but advised that they only had a condensed version of Appellant’s deposition transcript, advising that the court reporter’s information was included in the attached transcript. (*See* Exh. B). Mr. Smith responded with the query “You paid for the deposition, but only received a

condensed version?" (Exh. C), which the undersigned confirmed. (Exh. D). Subsequently, Appellant filed his Motion to Strike. Patently, the fact that Respondents are unable to provide Appellant with a full-size version of the transcript does not constitute a valid reason for striking Item No. 14.

Therefore, because there is no question that Item No. 14 was presented to the Commission and/or that it is at least as relevant to this appeal as items designated by Appellant himself, there is no legitimate basis for Appellant's Motion to Strike which should be denied.

CONCLUSION

For all the reasons set forth herein this Court should deny Appellant's Motion to Strike.

March 18, 2020

McANGUS GOUDELOCK & COURIE, LLC



Helen F. Hiser, S.C. Bar No.: 76124

P.O. Box 650007

Mount Pleasant, South Carolina 29465

(843) 576-2900

*Attorneys for Respondents United Parcel Service
and Liberty Mutual*

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 1322347

COURTNEY RAY MITCHELL,
Employee,

Claimant,
vs.
UNITED PARCEL SERVICE,
Employer,
AND
LIBERTY MUTUAL,
Carrier,
Defendants.

DECISION AND ORDER

DATE OF HEARING: Hearing held in Columbia, S.C. on November 2, 2018.

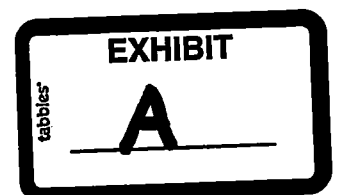
APPEARANCES: Claimant appeared via videoconference and was represented by Donald L. Smith, Esquire of Anderson, South Carolina.

Defendants represented by O. Shayne Williams, Esquire of McAngus Goudelock & Courie, L.L.C. of Myrtle Beach, South Carolina.

PURPOSE OF THE HEARING: To determine all issues as set forth in Forms 50 and 51 as well as any other issues timely presented before the Commission.

COMMISSIONER: Commissioner T. Scott Beck

FILED: February 14, 2019



STIPULATIONS

At the hearing, Counsel for the Claimant and Defendants stipulated the following issues:

1. The purpose of the hearing was to determine the issues set forth on Forms 50, 51, the Hearing Notice, and any other issues which were timely presented before the Commission.
2. Notice of the hearing was timely and properly served upon all parties of interest.
3. The parties agreed that venue was proper.
4. Claimant's average weekly wage and corresponding compensation rate are \$870.39 and \$580.29, respectively.
5. Claimant seeks benefits under the South Carolina Workers' Compensation Act based upon an injury he alleges occurred on June 21, 2013. Therefore, the South Carolina Workers' Compensation Commission has jurisdiction over this claim.

APA SUBMISSIONS

The following records were submitted into evidence pursuant to the Administrative Procedures Act.

Claimant's APA Submissions:

1. Records of Three Rivers Behavioral Health, dated 6/28/13-7/15/13 (pp. 1-6)
2. Records of Self-Memorial Hospital, dated 7/28/13-7/29/13 (pp. 7-25)
3. Records of Rebecca Norris, M.D., dated 9/4/13 (pp. 26)
4. Records of Greenville County Psychological Services Division Department of Public Safety, dated 7/30/13-10/17/14 (pp. 27-43)
5. Records of Manual R. Torres, LISW, CP, dated 1/20/14 (pp. 44-50)
6. Records of David R. Price, PhD, dated 11/17/15 (pp. 51-66)

7. Statements taken after lunch, dated 6/21/13 (pp. 67-74)
8. Negative Emails (pp. 75-78)
9. Statements by: Reggie Owens, Dwight Inman and Mike Leonard (pp. 79-83)
10. Courtney's Coaching Review Reports (pp. 84-107)
11. Deposition of Michael Battista, dated 10/15/15 (pp. 108-141)
12. Deposition of Scott Brown, dated 10/15/15 (pp. 142-155)
13. Deposition of Donnie Canady, dated 10/15/15 (pp. 156-201)
14. Deposition of Sharon Mayes, dated 10/15/15 (pp. 202-229)
15. Deposition of Reginald Owens, dated 10/15/15 (pp. 230-266)
16. Deposition of Michael Leonard, dated 10/15/15 (pp. 267-320)
17. Transcript-Motion to Vacate Order of Protection, dated 1/30/14 (pp. 321-386)
18. Deposition of Dr. Rebecca Norris, dated 3/23/18 (pp. 387-551)
19. Physician's Assessment Statement, Dr. Pat Mullen, dated 4/8/18 (pp. 552-557)
20. Deposition of Dr. Patrick Mullen, dated 6/25/18 (pp. 558-714)
21. Deposition of Velma Jones with exhibits (pp. 715-793)
22. DVD – Shots Fired

Defendant's APA Submissions:

23. Records of Dr. Rebecca Norris, Primary Care Associates, dated 12/5/12-5/6/14 (pp. 794-819)
24. Records of SC Department of Corrections, dated 3/3/15-5/19/17 (pp. 820-902)
25. Records of Manuel R. Torres, M. Torres Therapy, dated 1/20/14 (pp. 903-909)
26. Records of Patrick B. Harris Psychiatric Hospital, dated 7/17/06-9/13/06 (pp. 910-916)

27. Records of Pickens Detention Center, dated 7/3/06-7/17/06 (pp. 917-922)
28. Records of Greenville County Detention Center, dated 6/26/13-2/25/15 (pp. 923 – 1117)
29. Records of Dr. David Price, The Forensic Network, dated 10/2/13-10/26/15 (pp. 1118-1144)
30. Records of Abbeville Mental Health Clinic, dated 10/17/06-8/2/07 (pp. 1145-1165)
31. Records of Dr. Timothy Y. Dew, The Hand Center, P.A., dated 6/10/13 (pp. 1166-1180)
32. Records of Three Behavioral Health, dated 6/28/13-7/8/13 (pp. 1181-1249)
33. Records of Greenville Health System, dated 6/27/13-6/28/13 (pp. 1250-1266)
34. Records of AnMed Health, dated 7/31/01-7/27/13 (pp. 1267-1309)
35. Records of Anderson Radiology, dated 5/1/12-6/11/13 (pp. 1310-1316)
36. Personnel records from Ralph Hayes Toyota (pp. 1317-1321)
37. UPS Personnel File (pp. 1322-1394)
38. UPS Performance File (pp. 1395-1416)
39. UPS Coaching File (pp. 1417-1467)
40. UPS Emails (pp. 1468-1499)
41. UPS statements and investigation on alleged threats (pp. 1500-1550)
42. Transcript of Record, dated 2/12/15 (pp. 1551-1706)
43. Records of Anderson Family Court, dated 5/9/14 (pp. 1707-1709)
44. Personnel records from American Services, Inc., dated 6/30/06 (pp. 1710-1711)
45. Records of Department of Probation, Parole, and Pardon Services (pp. 1712-1727)
46. Records of Department of Corrections (pp. 1728-1733)

47. Records of Davies County District Court (pp. 1734-1737)
48. Emails to/from Claimant's Attorney regarding mileage and fees for deposed witnesses (pp. 1738-1739)
49. S.C. Inmate Detail Report (pp. 1740-1741)
50. Updated SC Department of Corrections Records (pp.1742-1797)
51. Deposition of Courtney Ray Mitchell
52. Deposition of Dr. Robert Mullen
53. Deposition of Dr. Rebecca Norris
54. Deposition of Velma Jones

STATEMENT OF THE CASE

This claim involves a denied injury to Claimant's psyche, back, and arms which Claimant alleges occurred on June 21, 2013. Claimant seeks a finding of compensability and causally related medical treatment from the date of injury and continuing. Claimant further contends that he reached maximum medical improvement on the date of injury, June 21, 2013. Claimant is not alleging entitlement to temporary total disability benefits, but he does seek a finding of permanent and total disability entitlement. Defendants take the position that Claimant did not sustain an injury that arose out of and in the course of his employment as alleged. Defendants further assert that Claimant failed to provide proper notice of the alleged accident and that any claim for benefits as a result of a physical injury is barred by the Doctrine of *Latches*. Therefore, Defendants request Claimant's claim and request for benefits be denied in full.

EVIDENCE OF THE CASE

LIVE TESTIMONY

Testimony of Courtney Ray Mitchell (Claimant):

Helen Hiser

From: Helen Hiser
Sent: Thursday, March 05, 2020 1:27 PM
To: 'aisaford0302@gmail.com'; 'attorneydonaldsmith@gmail.com'
Cc: Mackenzie Broughton; Shayne Williams
Subject: RE: Courtney Mitchell v. UPS Appellate Case No.: 2019-001361
Attachments: Def APAs designated to ROA.pdf; Cl Dep.pdf

Mr. Ford, I am responding to your email on behalf of my assistant, Ms. Broughton. While we are glad to assist you in compiling the Record on Appeal by providing items that we have, we would like to take this opportunity to again request a copy of the Brief allegedly filed on Mr. Mitchell's behalf with the SC Workers' Compensation Commission. To date, we have never received a copy even after advising Mr. Smith multiple times that we have never received it.

Attached are the Defendant's APAs that we designated for inclusion in the ROA. We assume you are in possession of the APAs filed by your office, including APA Nos. 156-181, 142-153, 184-199, 267-318 and 333-343 that we designated. If you are not in possession of those designated pages, please advise us at once, and we will be glad to send you those.

As for Mr. Mitchell's deposition transcript, we only have a condensed version, which the Court of Appeals will not accept. Rule 267(c), SCACR. However, the Court Reporter's information is on the last page of the attached. You can contact her and order a full-size version of the transcript.

Sincerely,
Helen Hiser


From: Aisa Ford <aisaford0302@gmail.com>
Sent: Thursday, March 05, 2020 12:32 PM
To: Mackenzie Broughton <mackenzie.broughton@mgclaw.com>
Subject: Re: Courtney Mitchell v. UPS Appellate Case No.: 2019-001361

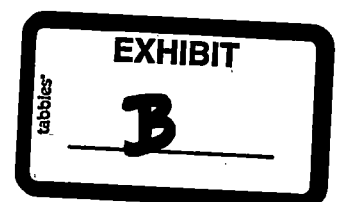
Dear Ms. Broughton:

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Thank you and I am hoping for your kind consideration.

Very truly yours,
Aisabai A. Ford
Attorney Office of Donald L. Smith
122 North Main St.
Anderson, SC 29621
Tel. No: (864) 642-9284 Fax No: (864) 642-9285

 Sender notified by
Mailtrack _____



Helen Hiser

From: Don Smith <attorneydonaldsmith@gmail.com>
Sent: Thursday, March 05, 2020 1:38 PM
To: Helen Hiser
Cc: aisaford0302@gmail.com; Mackenzie Broughton; Shayne Williams
Subject: Re: Courtney Mitchell v. UPS Appellate Case No.: 2019-001361

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Aisabai A. Ford

Attorney Office of Donald L. Smith

122 North Main St.

Anderson, SC 29621

Tel. No: (864) 642-9284 Fax No: (864) 642-9285



Sender notified by
Mailtrack ---



Helen Hiser, Attorney
helen.hiser@mgclaw.com
735 Johnnie Dodds Blvd. Ste 200
Mt. Pleasant, SC 29464
Main: 843-576-2900 | Direct: 843-576-2930 | Fax: 843-534-0605
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--
Donald L. Smith
Attorney Office of Donald Smith

122 N. Main St.
Anderson SC 29621
Telephone: (864) 642-9284
Facsimile: (864) 642-9285
attorneydonaldsmith@gmail.com

Helen Hiser

From: Helen Hiser
Sent: Thursday, March 05, 2020 1:41 PM
To: 'Don Smith'
Cc: aisaford0302@gmail.com; Mackenzie Broughton; Shayne Williams
Subject: RE: Courtney Mitchell v. UPS Appellate Case No.: 2019-001361

Correct. That is all we have in our files.

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Sent: Thursday, March 05, 2020 1:38 PM
To: Helen Hiser <helen.hiser@mgclaw.com>
Cc: aisaford0302@gmail.com; Mackenzie Broughton <mackenzie.broughton@mgclaw.com>; Shayne Williams <shayne.williams@mgclaw.com>
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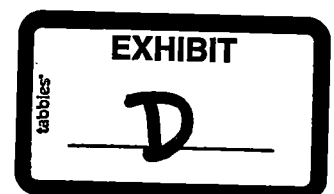
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Aisabai A. Ford

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mgc

Helen Hiser, Attorney
helen.hiser@mgclaw.com
735 Johnnie Dodds Blvd. Ste 200
Mt. Pleasant, SC 29464

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--

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Attorney Office of Donald Smith
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Facsimile: (864) 642-9285
attorneydonaldsmith@gmail.com

THE STATE OF SOUTH CAROLINA
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MAR 20 2020

SC Court of Appeals

Appeal No. 2019-001361

Courtney Ray Mitchell, Employee,Appellant,

v.

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

PROOF OF SERVICE

I certify that on the 18th day of March 2020, I served Respondents United Parcel Service and Liberty Mutual's **Return in Opposition to Appellant's Motion to Strike Item from Designation of Matter** on Courtney Ray Mitchell by depositing a copy of it in the United States Mail, postage prepaid, addressed to his attorney of record as follows:

Donald L. Smith, Esq.
ATTORNEY OFFICE OF DONALD SMITH
122 N. Main Street
Anderson, South Carolina 29621
*Counsel for Appellant
Courtney Ray Mitchel*



Mackenzie Broughton
Legal Assistant to Helen F. Hiser
McAngus, Goudelock & Courie LLC
P.O. Box 650007
Mount Pleasant, South Carolina 29465
(843) 576-2900

*Attorneys for Respondents United Parcel
Service and Liberty Mutual*



Reply To

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

March 18, 2020

Via U.S. Mail

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

RECEIVED
MAR 20 2020
SC Court of Appeals

RE: Courtney Ray Mitchell v. UPS and Liberty Mutual
Date of Accident: June 21, 2013
WCC File No.: 1322347
Our File No.: 2095.15004
Claim No.: WC555C6285
Appeal No.: 2019-001361

Dear Ms. Kitchings:

Enclosed please find the original and six (6) copies of Respondents' Return in Opposition to Appellant's Motion to Strike Item from Designation of Matter, and the original and one copy of the Proof of Service in the above-referenced matter.

If you have any questions, please do not hesitate to contact me.

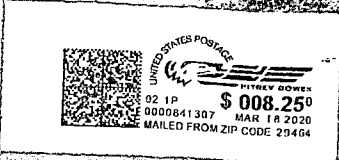
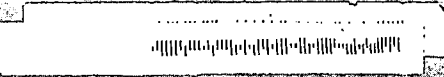
Sincerely,
McAngus Goudelock & Courie, LLC



Helen F. Hiser

Enclosures

cc: Donald L. Smith, Esq.



mgc | INSURANCE
DEFENSE

POST OFFICE BOX 1343
MYRTLE BEACH, SC 29578

RECEIVED
MAR 20 2020
SC Court of Appeals

2095.15004/HFH/mtb
The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
P.O. Box 11629
Columbia, South Carolina 29211