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MAR 20 2020

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

Appeal from South Carolina Workers' Compensation Commission

Appellate Case No. 2018-00959 Opinion 27951 filed March 11, 2020

Danny B. Cane,

Petitioner,

v.

Raber's Discount Tire Rack, Employer, and
South Carolina Uninsured Employers' Fund, Carrier,

Respondents.

PETITION FOR REHEARING

Respondent, South Carolina Uninsured Employers' Fund hereby files this Petition for Rehearing. On March 11, 2020, the Supreme Court issued an opinion finding that a new hearing shall be held by South Carolina Workers' Compensation Commission to reconsider the date of maximum medical improvement and to make *de novo* findings on Petitioner's claim for temporary total disability, permanent impairment and future medical care based on his alleged hearing loss, head or brain injury and psychological overlay.

ARGUMENT

1. Petitioner abandoned any brain injury claim repeatedly throughout the course of this appeal.

Respondent files this Petition for Rehearing with regards to the Order of remand for a *de novo* review to determine if the Claimant suffered a head or brain injury.

Petitioner initially alleged on his Form 50 that he suffered a brain injury but later abandoned this claim after the denial by the Single Commissioner. The Single Commissioner found that the Claimant did not suffer a brain injury. (Appendix pp. 50, 51). This finding was also upheld by the Full Commission. (Appendix pp. 69, 70). Multiple times through the course of this appeal, Petitioner has made it clear that he has abandoned his brain injury claim. It is well settled law in South Carolina that when an issue is not supported by law in a brief or only a conclusory statement is made in a brief then it has been abandoned on appeal. First Sav. Bank v. McLean, 314 S.C. 361, 444 S.E.2d 513 (1994). This issue of whether Petitioner suffered a brain injury was clearly abandoned not only because the Petitioner failed to brief or address this issue in either of his briefs to the Court of Appeals or Supreme Court but also because Petitioner has made numerous statements that he is not pursuing a brain injury.

In Petitioner's Brief to the Full Commission, Petitioner for makes it clear that he is not pursuing a brain injury. Petitioner acknowledges that one of the reasons for dropping the alleged brain injury claim was because of 1990 motor vehicle accident that placed him in a coma. (Petitioner's Brief to Full Commission, p. 6). Furthermore, in the Petitioner's Brief to the Full Commission, Petitioner makes it clear that the only issues on appeal that are being pursued are the rulings on hearing loss, depression, future medical care and temporary total care

In Petitioner's brief to the Court of Appeals, he only raises two issues on appeal, whether Clamant suffered a compensable hearing loss along with headaches and dizziness and whether Petitioner was entitled to temporary total benefits. (Appendix p.

276). Petitioner specifically states in a foot note in his brief that he has abandoned his brain and face claim. (Appendix p. 280).

In Petitioner's brief to the Supreme Court, the only issues raised were whether the Petitioner had reached MMI for his hearing loss, whether Petitioner was entitled to additional treatment for his hearing loss, whether the appellate panel erred in its finding of credibility, whether the lower courts erred in not finding that Petitioner suffered a hearing loss and whether Petitioner was entitled to temporary total benefits. Petitioner did not challenge the findings of the Single Commissioner that he did not suffer a brain injury. Furthermore, during oral arguments, Petitioner did not raise the issue of a brain injury.

It is evident that the issue of whether the Petitioner suffered a brain injury was clearly abandoned by the Petitioner. Therefore, the Court should reverse the order that the South Carolina Workers' Compensation Commission makes *de novo* findings on whether Petitioner suffers a brain injury.

Respectfully submitted,



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Workers' Compensation Commission

APPELLATE CASE NO. 2018-00959 OPINION 27951

DANNY B. CRANE PETITIONER,

v.

RABER'S DISCOUNT TIRE RACK, EMPLOYER, AND SOUTH
CAROLINA UNINSURED EMPLOYERS FUND, CARRIER, RESPONDENTS.

PROOF OF SERVICE

The undersigned hereby certifies that a true copy of the Respondent, South Carolina Uninsured Employers' Fund's Petition for Rehearing was served upon the following parties on the 19 day of March, 2020, via United States overnight delivery:

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