

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

Appellate Case No.: 2018-001111

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Jun 01 2020

SC Court of Appeals

Veronica Rodriguez, Employee, Respondent,

v.

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

**RESPONDENT'S RETURN TO APPELLANTS' MOTION FOR LEAVE OF THE
COURT TO PURSUE SCRCP 60 RELIEF FROM JUDGEMNET BEFORE THE SOUTH
CAROLINA WORKERS COMPENSATION COMMISSION**

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Attorney for the Claimant/Employee/
Respondent

COME NOW, Claimant/Respondent, pursuant to SCAR 240(e), by and through her undersigned attorney, respectfully requesting that the South Carolina Court of Appeals deny Defendants'/Appellants' "Motion for Leave of the Court to Pursue SCRCP 60 Relief from Judgment Before the South Carolina Workers' Compensation Commission" dated May 22, 2020. The reasons Defendants'/Appellants' Motion should be denied are as follows:

1. SCRCP 60 is entitled "Relief from Judgment or Order," and subsection (b) states in pertinent part as follows:

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc. On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceedings for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect;

(2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);

(3) fraud, misrepresentation, or other misconduct of an adverse party;

(4) the judgment is void;

(5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application.

The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to set aside a judgment for fraud upon the court.

(Emphasis added).

Whether to grant or deny a motion under Rule 60(b) lies within the sound discretion of the judge. Coleman v. Dunlap, 306 S.C. 491, 494, 413 S.E.2d 15, 17 (1992). Appellants' request for relief is from a judgment entered on January 5, 2018, wherein the Honorable Commissioner Mike Campbell awarded Claimant/Respondent compensation benefits. Appellants' contend that the Commission's award of compensation benefits in this case was based on perjured testimony from Claimant/Respondent regarding her inability to work. Specifically, Appellants' attach as Exhibit 1 to their Motion for Leave "highlighted excerpt from Hearing Transcript of Claimant's testimony." Had Appellants' submitted the entirety of the Hearing Transcript, it would be clear on the face of the document that the transcript is of a Hearing which took place on November 3, 2017. Furthermore, Appellants' attach as Exhibit # 3 "highlighted excerpt from Commissioner's Order." Had Appellants' submitted the entirety of the Order, it would be clear on the face of the document that the Order of Commissioner Campbell was entered on January 5, 2018. Therefore, Claimant submits that, irrespective of using the date of the alleged perjured testimony (November 3, 2017) or the date of entry of Commissioner Campbell's Order (January 5, 2018), Appellants' motion to seek leave is untimely. SCRCP 60 clearly states that a motion under 60(b) (1)-(3) must be made within a reasonable time no later than one year from the original judgment. **"One year is the absolute time limit."** Coleman v. Dunlap, at 495 (emphasis added).

2. As to Appellants' Exhibit #2 entitled "Indictment and clocked guilty plea," introduction of these items into the record is inadmissible and in violation of the

Omnibus Insurance Fraud and Reporting Immunity Act per Fore v. Griffco of Wampee, Inc., 409 S.C. 360, 762 S.E.2d 37 (S.C. App. 2014). In Fore, the Court of Appeals held that including among materials before single commissioner a letter sent by Director of the Workers' Compensation Commission's Compliance Division to the Insurance Fraud Division of the Office of the Attorney General, reporting allegations of insurance fraud by Claimant, violated Omnibus Insurance Fraud and Reporting Immunity Act, and therefore, although Director's letter might have been part of the Commission's file, it should have been segregated from those portions of the file that could be viewed by members of the public.

Sections 38-55-510 through -590 of the South Carolina Code (2002), otherwise known as Omnibus Insurance Fraud and Reporting Immunity Act, provides as to the available of information about fraudulent insurance claims, the Act provides:

Except as otherwise provided by law, any information furnished pursuant to this section *is privileged and shall not be part of any public record*. Any information or evidence furnished to an authorized agency pursuant to this section is not subject to subpoena or subpoena duces tecum in any civil or criminal proceeding unless, after reasonable notice to any person, insurer, or authorized agency which has an interest in the information and after a subsequent hearing, a court of competent jurisdiction determines that the public interest and any ongoing investigation will not be jeopardized by obedience of the subpoena or subpoena duces tecum.

S.C. Code Ann. § 38-55-750(D)(2002)(emphasis added).

Therefore, Respondent submits that Appellants' inclusion of these documents as part of their Exhibits to this Court is improper, as they can be viewed by members

of the public and thus in violation of the Omnibus Insurance Fraud and Reporting Immunity Act.

3. Accordingly, Respondent submits that Appellants' "Motion for Leave of the Court to Pursue SCRCP 60 Relief from Judgment Before South Carolina Workers' Compensation Commission" is untimely made and the Motion should be dismissed.

FOR THE FOREGOING REASONS, Respondent/Claimant Ms. Veronica Rodriguez respectfully requests that the Motion be dismissed.

Respectfully submitted,

VERONICA RODRIGUEZ

By counsel



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Attorney for the Claimant/Employee/
Respondent

North Charleston, South Carolina

June 1, 2020

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PROOF OF SERVICE

I certify that I have served the Respondent's Return To Appellants' Motion For Leave of the Court to Pursue SCRCP 60 Relief From Judgment Before the South Carolina Workers' Compensation Commission on Appellants' Peggy Evers and Norguard Insurance Company by depositing a copy of it in the United States Mail, postage prepaid, on June 1, 2020, addressed to their attorneys of record, M. Stephen Stublely, George D. Gallagher & Robert Horner of Speed, Seta, Martin, Trivett & Stublely, LLC, PO Box 11669, Columbia SC 29211 and via electronic mail at [sstublely@speed-seta.com](mailto:ssublely@speed-seta.com), bhorner@speed-seta.com, and ggallagher@speed-seta.com.



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Attorney for the Respondent

June 1, 2020

North Charleston, South Carolina

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June 1, 2020

Via First Class Mail & E-File: CTAPPFILINGS@SCCOURTS.ORG

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

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Jun 01 2020

SC Court of Appeals

Re:	Claimant/Respondent:	Veronica Rodriguez Texacahua
	Date of Injury:	December 5, 2016
	Employer/Appellant:	Peggy Evers, Cleaner Concepts/NorGuard Ins. Co.
	WCC File No.:	1619767
	Appellate No.:	2018-001111

Dear Ms. Kitchings:

In connection with the above-referenced matter, please find enclosed for filing Respondent's Return to Appellants' Motion for Leave of the Court to Pursue SCRCP 60 Relief from Judgment before the South Carolina Workers' Compensation Commission.

All counsel of record were served with an identical copy via First Class US mail and electronically.

With kindest regards, I remain

Sincerely yours,


Don C. Gibson

DCG/emd

Enclosures: as stated

cc: Claimant

Robert Horner, Esquire

M. Stephen Stubley, Esquire

George D. Gallagher, Esquire