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Jul 16 2020

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA WORKERS
COMPENSATION COMMISSION

T. Scott Beck, Commissioner

Appellate Case No. 2019-001361

Courtney Ray Mitchell,

Appellant,

v.

United Parcel Service and
Liberty Corporation,

Respondents.

APPELLANT'S FINAL REPLY BRIEF

s/Donald L. Smith

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July 10, 2020

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STATEMENT OF THE CASE

Appellant adopts and incorporates by reference the Statement of Case and Facts presented in his Initial Brief. This appeal is brought pursuant to the dismissal by the Worker's Compensation Commission's (hereinafter referred as Commission) of his appeal. Appellant timely filed his Notice of Appeal and filed his Initial Brief on October 17, 2019. Respondents filed their Initial Brief on February 14, 2020.

ARGUMENTS

I. THE COMMISSION ERRED IN DISMISSING APPELLANT'S APPEAL.

Appellant reiterates his position that his Appeal was proper; and that his Appellant's Brief to the Commission was timely filed. The Brief was due on May 12, 2019, which was a Sunday. Counsel for Appellant attested to signing the Brief, applying the postage, driving to the Post Office and sliding the envelopes containing said Brief into the receptacle. For all intents and purposes, Appellant performed all actions relating to the mailing of Appellant's Brief on May 13, 2019, a Monday.

The rule is clear and unambiguous. Rule 6 SCRCF allows adjusting the filing of any pleading or motion to the next business day if the deadline for filing falls on a Saturday, Sunday or a holiday.¹ Service is complete upon mailing. (Rule 5(b) of the SCRCF). There is no subsection regarding its receipt by the intended parties. Appellant's duty with regard to service was accomplished upon sliding the mailings into the box at the post office on May 13, 2019.

¹ "In computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or a State or Federal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor such holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and holidays shall be excluded in the computation. A half-holiday shall be considered as other days and not as a holiday."

II. RESPONDENTS DID NOT ADDRESS THE TIMELINESS ISSUE.

Appellant takes issue with Respondents' claim that he used his depiction of the facts in a manner likely to evoke empathy from the Court. Respondents, on the other hand, took twenty-one (21) pages to assassinate any perception that the Court may have of Appellant. The hypocrisy of Respondents is best illustrated by the anecdote offered wherein Appellant allegedly "threw a hot liquid substance into the face" of a detention officer. The alleged incident occurred on October 4, 2015. The Workers' Compensation date of the accident was listed as June 21, 2013.

Respondents offered that statement (complete with embellishment) to raise the ire of the Court. Respondents did not provide the Court with any relevant information. They failed to state that when Appellant requested the video surveillance from the cafeteria (the location of the alleged assault), the State failed to provide it. They failed to report that Appellant never had a preliminary hearing. They failed to include that the State never got an indictment for the alleged "crime". Respondents did not tell the Court the truth-the case was dismissed without the slightest furtherance of a prosecution.

The only issue before the Court is whether Appellant's submission on May 13, 2019, was timely. Counsel for the Appellant served the documents on the Commission and the Respondents on Monday, May 13, 2019. The requests made by Respondents will not change anything and have no place in an appeal in which the only issue is timeliness. The Commission dismissed the Request for Review with the following verbiage:

The Request for Commission Review in the above captioned case is dismissed. The appellant brief was not timely filed pursuant to R.67-705 H(3). Brief was due by May 12, 2019, and no extension was requested.

Respondents are attempting to manufacture the record with innuendo. Service was completed on May 13, 2019. There is nothing within the record that contradicts this fact.

CONCLUSION

For these reasons, as well as those addressed in his Final Brief, Appellant respectfully requests that the Commission's judgment and/or order be reversed, and this case be remanded for a Commission Review.

Anderson, SC
July 10, 2020.

Respectfully submitted by:

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CERTIFICATE OF COUNSEL

The undersigned certified that Appellant's Final Reply complies with Rule 211(b),
SCACR.

Respectfully submitted by:

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