

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Appellate Case No. 2019-001254
WCC File No. 1506114

Frankie Padgett, Claimant..... Respondent,

v.

Cast & Crew Entertainment Services, Inc., Employer and
American Zurich Insurance Company, Carrier..... Appellants.

BRIEF OF APPELLANTS

Vernon F. Dunbar
McAngus Goudelock & Courie, LLC
55 East Camperdown Way
Suite 300
Greenville, South Carolina 29601
864-239-6735
vernon.dunbar@mgclaw.com
Attorney for Appellants

RECEIVED
JUL 29 2020
SC Court of Appeals

Table Of Contents

Table of Authorities.....ii

STATEMENT OF ISSUES ON APPEAL.....1

STATEMENT OF THE CASE.....3

STATEMENT OF THE FACTS.....7

STANDARD OF REVIEW.....10

ARGUMENTS.....12

 I. THE SOUTH CAROLINA WORKERS’ COMPENSATION COMMISSION LACKS JURISDICTION TO ORDER PAYMENT OF ADDITIONAL INDEMNITY BENEFITS OR TEMPORARY TOTAL DISABILITY COMPENSATION BECAUSE RESPONDENT HAS BEEN PAID IN EXCESS OF 500 WEEKS OF INDEMNITY BENEFITS.....12

 II. THE SOUTH CAROLINA WORKERS’ COMPENSATION COMMISSION LACKS JURISDICTION TO ORDER PAYMENT OF ADDITIONAL INDEMNITY BENEFITS OR TEMPORARY TOTAL DISABILITY COMPENSATION BECAUSE RESPONDENT HAS BEEN PAID IN EXCESS OF 500 WEEKS OF INDEMNITY BENEFITS.15

 III. THE COMMISSION LEGALLY ERRED AND ABUSED ITS DISCRETION IN FINDING PADGETT IS ENTITLED TO TEMPORARY TOTAL DISABILITY COMPENSATION BENEFITS AND PROSPECTIVELY DETERMINING A PERMANENT PARTIAL, PERMANENT TOTAL AND/OR WAGE LOSS AWARD CAN BE DETERMINED AT A LATER DATE ONCE MAXIMUM MEDICAL IMPROVEMENT HAS BEEN ACHIEVED.....18

CONCLUSION.....19

TABLE OF AUTHORITIES

Cases

<i>Bass v. Isochem</i> , 365 S.C. 454, 467, 617 S.E.2d 369, 376 (Ct. App. 2005).....	10
<i>Bass v. Isochem</i> , 365 S.C. at 468, 617 S.E.2d at 376	10
<i>Bursey v. South Carolina Dep't of Health & Envtl. Control</i> , 360 S.C. 135, 600 S.E.2d 80 (Ct. App. 2004)	10
<i>Cooper v. McDevitt-Street & Co.</i> , 260 S.C. 463, 196 S.E.2d 833 (1973).....	12
<i>Etheredge v. Monsanto Co.</i> , 349 S.C. 451, 562 S.E.2d 679 (Ct. App. 2002).....	11
<i>Frame v. Resort Services Inc.</i> , 357 S.C. 520, 527–28, 593 S.E.2d 491, 495 (Ct. App. 2004)	10
<i>Harding v. Plumley</i> , 329 S.C. 580, 496 S.E.2d 29 (1998)	12
<i>Hopper v. Firestone stores, et al.</i> , 222 S.C. 143, 72 S.E.2d 72 (1952).....	18
<i>James v. Anne's, Inc.</i> , 390 S.C. 188, 198, 701 S.E.2d 730, 735 (2010).....	14 & 15
<i>James v. Anne's, Inc.</i> , 390 S.C. 188, 199, 701 S.E.2d 730, 736	15
<i>Kelly v. Nationwide Mut. Ins. Co.</i> , 278 S.C. 488, 298 S.E.2d 454 (1982).....	14
<i>King v. Int'l Knife & Saw - Florence</i> , 395 S.C. 437, 442, 718 S.E.2d 227, 229 (Ct. App. 2011)..	11
<i>Lark v. Bi-Lo</i> , 276 S.C. 130, 276 S.E.2d 304 (1981).....	10
<i>Liberty Mutual Ins. Co. v. S.C. Second Injury Fund</i> , 363 S.C. 612, 611 S.E.2d 297 (2005).....	11
<i>Medlin</i> 303 S.C. 484, 488, 401 S.E.2d 667, 668 (1991).....	17 & 18
<i>Metropolitan Life Ins. Co. v. Stuckey</i> , 194 S.C. 469, 10 S.E. 3 (1940)	12
<i>Regions Bank v Schmauch</i> , 354 S.C. 648, 672, 582 S.E.2d 432, 444 (Ct. App. 2003)	12
<i>S.C. Uninsured Employers' Fund v. House</i> , 360 S.C. 468, 602 S.E.2d 81 (Ct. App. 2004)	11
<i>Small v. Oneita Indus.</i> , 318 S.C. 553, 459 S.E.2d 306 (1995).....	12

<i>Tiller v. Nat'l Health Care Ctr.</i> , 334 S.C. 333, 513 S.E.2d 843 (1999)	10
<i>Wehle v. S.C. Retirement Syst.</i> , 363 S.E. 394, 611 S.E.2d 240 (2005)	11

Statutes

<i>S.C. Code Ann. §42-1-10 (2020)</i>	12
<i>S.C. Code Ann. §§ 42-1-130- 150 (2020)</i>	12
<i>S.C. Ann. § 42-9-10(A) (Supp. 2009)</i>	15
<i>S.C. Code § 42-9-170</i>	15
<i>S.C. Code Ann. § 42-9-170 (2018)</i>	17
<i>S.C. Code Ann. §§ 42-1-10; 42-1-130-150 (2020)</i>	12
<i>S.C. Code Ann. §1-23-380(A)(5) (Supp. 2014)</i>	10
<i>S.C. Code Ann. §1-23-380(A)(5)</i>	10
<i>S.C. Code Ann. § 42-1-10 (2020)</i>	18
<i>S.C. Code Ann. §42-9-410(d) (2018)</i>	18

Regulations

<i>S.C. Comm. Reg. 67-803(B)(2)(a-c)(C) (2020)</i>	13
--	----

STATEMENT OF ISSUES ON APPEAL

1. Did the South Carolina Workers' Compensation Commission err in vacating the Hearing Commissioner's finding that the settlement agreement and release (clincher) reflected 1,704.56 weeks of benefits had been paid pursuant to a prior work-related accident and as such, Respondent/Claimant was not entitled to additional indemnity benefits because Respondent's payment for the prior accident coupled with the 2015 accident had exceeded or reached the 500 week limitation as set forth in section 42-9-10 & 30 of the South Carolina Code of Laws?
2. Did the South Carolina Workers' Compensation Commission err in vacating the Hearing Commissioner's decision in its application and erroneous analysis of section 42-9-170, in which the Commission concluded the statute applies to successive permanent injuries after a previous permanent injury, the error being Respondent was illegally in the same employ at the time of the subsequent accident, which occurred on May 6, 2015, and had been paid in excess of 500 weeks of compensation according to the prior settlement terms?
3. Did the South Carolina Workers' Compensation Commission err in finding and concluding Respondent is entitled to payment of temporary total disability compensation benefits, despite having been paid in excess of 500 weeks of worker's compensation benefits?
4. Did the South Carolina Workers' Compensation Commission err in vacating the Hearing Commissioner's Order and prospectively finding Respondent is entitled to payment of temporary total compensation benefits and that a determination of permanent partial, permanent total and/or wage loss benefits can be determined at a later date once Respondent reaches maximum medical improvement? The error being Respondent had been paid in excess of 500 weeks of benefits and

is not entitled to any additional indemnity benefits; and was subsequently employed in violation of the previous judgment, decree and order of the Commission?

5. Did the South Carolina Workers' Compensation Commission err in factually finding and legally concluding Respondent shall be paid temporary total disability compensation benefits until further Order of the Commission, the error being that the conclusion and finding are contrary to the terms set forth in the 2012 settlement agreement which prohibited Respondent from seeking employment with Cast and Crew subsequent to October 12, 2012. Additionally, the South Carolina Worker's Compensation Commission lacks subject-matter jurisdiction and cannot award Respondent any benefits arising from the May 6, 2015 accident because there was not a lawful employment relationship?

6. Did the South Carolina Workers' Compensation Commission err in vacating the Hearing Commissioner's findings and decision regarding the payment of temporary total disability compensation benefits and ordering such to be paid in the absence of an injunction; fraud committed by Appellants; and the lack of subject-matter jurisdiction?

7. Did the South Carolina Workers' Compensation err vacating the Hearing Commissioner's decision on the payment of temporary total disability compensation benefits because the decision absent a re-hearing constitutes a violation of Appellants' right to due process?

8. Did the South Carolina Workers' Compensation Commission err in vacating the Hearing Commissioner's decision denying Respondent temporary total disability compensation benefits, when the reliable, probative, and substantial evidence reflects Respondent has been paid in excess of 500 weeks of benefits and Respondent was not a lawful and legal employee of Cast and Crew at the time of his accident on May 6, 2015?

STATEMENT OF THE CASE

Frank Perry Padgett, Jr. a/k/a Frankie Padgett, Perry F. Padgett, Jr., and Perry Padgett [hereinafter “Padgett” or “Respondent”] is a 54-year old male, who stands 6’3” tall and weighed 352 pounds around the time of the accident. Padgett was hired to work as a driver for Cast & Crew Entertainment Services, Inc., the employer, on March 30, 2015, by virtue of his membership in the Teamsters Union. [R.p. 59]. Specifically, Cast & Crew Entertainment Services, Appellant, is assigned drivers through the Teamsters Union and the drivers in turn provide transportation services for film production in South Carolina. [R.pp. 94-96].

On or about May 6, 2015, Frankie Padgett, Respondent, was entering a trailer in order to make a copy when he felt right ankle pain. Padgett suffered a tear of his right Achilles tendon and ankle fracture. [R.p.163]. Padgett reported the right ankle injury on the same date to Brian Turner, a supervisor and medic.[R.pp. 232-234].

Padgett was initially treated at Nason Medical Urgent Care Center. [R.p.232 complained of pain radiating from the right ankle into the right calf. Padgett also complained of numbness and tingling of the right ankle. Padgett underwent a physical examination and x-rays of the right ankle.

The medical providers at Nason Medical Center Urgent Care diagnosed Padgett with a right foot and ankle fracture and a rupture of the Achilles tendon. Accordingly, Padgett was released on the same date and advised not to work from May 6, 2015 to May 8, 2015.

Subsequently, Padgett treated with Dr. John Prather because of continued right foot and ankle pain. Dr. Prather ordered a MRI. [R.pp. 163 p. 162- 190]. The MRI revealed an Achilles tendon rupture, plantar fasciitis and plantar calcaneal spur. Dr. Prather initially prescribed a

CAM boot and the medications Percocet and Flexeril for pain and spasms. Because conservative medical modalities did not improve Padgett's symptoms of pain, Dr. Prather performed right Achilles reconstruction surgery on May 19, 2015. [R.pp. 162-166; 179-181; 236-238].

Several weeks after undergoing right Achilles reconstruction surgery, Padgett suffered a second Achilles rupture when he felt a pop in his right heel while lifting himself from the toilet. [R.pp. 170].

Padgett underwent a second MRI, which revealed a re-rupture of the right Achilles tendon. Dr. Prather performed a debridement of the Achilles and a second reconstruction surgery. [R.p. 175]. Padgett was placed in a short leg splint after surgery. Dr. Prather later prescribed a short leg cast with plantar flexion. Dr. Prather also ordered Padgett to undergo physical therapy. [R.p. 174].

During the course of Padgett's physical therapy, he continued to complain of right ankle and foot pain. Dr. Prather administered injections to address Padgett's post-surgery complaints of pain. Dr. Prather also prescribed a number of pain and anti-inflammatory medications, i.e., Percocet, Lyrica, Mobic, Flexeril, Elavil, Soma, and Amitriptyline.

On January 19, 2016, Padgett underwent an IME with Dr. Richard Gross, an orthopaedic surgeon. Dr. Gross recommended Padgett undergo an EMG in order to evaluate the cause of the neuropathy affecting the right foot. Dr. Gross also recommended the possible transfer of FHL tendon from the big toe to the calcaneus bone in order to improve the flexion of the right foot.

Padgett attended physical therapy sessions at Low Country Rehabilitation from September 1, 2015 to September 28, 2016. Because physical therapy did little to alleviate Padgett's complaints of pain, he was referred to Dr. Gerald Chai for another medical opinion. Dr. Chai first evaluated Appellant on March 30, 2016, for complaints of chronic pain. Dr. Chai

recommended Padgett continue with long-term narcotic medication in order to treat complaints of chronic pain. [R.p. 212 & 221].

While Padgett was receiving medical treatment resulting from the May 6, 2015 accident, the insurance claims adjuster for American Zurich Insurance Company, Appellant, discovered Padgett had been involved in a prior work-related accident as an employee of Cast & Crew on August 27, 2009. [R.pp. 37-39; 230 & 242]. Padgett first began work for Cast & Crew on January 26, 2009, as a truck driver. [R.p. 38]. Padgett's job duties had required him to transport film equipment and set materials to various locations.

On August 27, 2009, Padgett fell while walking up the steps to a warehouse. [R.p. 39]. He injured his left ankle and right knee. [R.p. 43]. Padgett underwent multiple surgeries to the left ankle. Padgett subsequently began complaining of increased right knee pain and low back pain. Because Padgett suffered with diabetes, hypertension and obesity, he contended he was permanently and totally disabled because of the 2009 accident. Padgett later filed a Form 50 seeking a permanent and total disability award. [R.p. 39].

Padgett was paid \$106,000.00 or 154.8571 weeks of temporary total disability compensation benefits from 2009 to 2012. [R.p. 37 lines 1-2 of Form 19]. Padgett's 2009 claim was ultimately settled for a lump sum payment of \$150,000.00, by virtue of a settlement agreement and release (clincher). [R.pp. 31-36]. The amount of money paid to resolve Padgett's 2009 indemnity and medical benefits claim and the subsequent payments of temporary total disability benefits stemming from the 2015 accident have resulted in excess of 500 weeks of benefits being paid to Padgett. [R.pp. 37 & 244].

Upon review of the two claims, the adjuster discovered that Padgett had utilized his legal name of Perry Padgett, Jr., with regard to the 2009 claim and a variation of his name for the 2015

claim. [R.pp. 31; 36-41; 43; 85 ll. 5-7; 87-88 ll. 16-20; & 242-243]. In particular, at the time of Padgett's re-hire with Cast & Crew Entertainment Services on March 30, 2015, he utilized the name of Frankie Padgett. [R.pp. 56-59]. Padgett utilized two different names in obtaining benefits.

Upon this discovery around May 17, 2017, it was concluded Padgett would soon be paid in excess of 500 weeks of benefits, and that no additional indemnity benefits should be paid pursuant to sections 42-9-160 and 170 of the South Carolina Code of Laws.

Accordingly, a hearing to address the issues raised in the Petition of the employer and carrier, Appellants, was scheduled on October 30, 2017, in Moncks Corner, South Carolina, by the Honorable Aisha Taylor, Commissioner [R.pp. 25-28]. On May 31, 2018, Commissioner Taylor promulgated an Order permitting Appellants to terminate payment of temporary total disability compensation benefits to Padgett because of receipt of payments in excess of 500 weeks of compensation benefits. [R.pp. 11-24].

Padgett appealed Commissioner Taylor's Decision and Order to the Full Commission. The Full Commission affirmed in part and vacated in part the Hearing Commissioner's Decision and Order. [R.pp. 1-10].

STATEMENT OF THE FACTS

Frankie Padgett, Jr., a/k/a Perry F. Padgett, Jr. or Perry Padgett, worked in the employment of Cast & Crew. During Padgett's first period of employment with Cast & Crew, he sustained injuries to his left foot, left leg, back, hips and right leg on August 27, 2009. [R. p. 31].

Padgett received temporary total disability compensation benefits from August 28, 2009, to September 26, 2012. As a result, Padgett was paid a total of 154.8571 weeks of temporary compensation benefits. [R. p. 37, lines 1-2]. Cast & Crew also paid \$91,851.55 in medical benefits. [R. p. 37, line 6].

Padgett resolved the 2009 claim for the lump sum and non-commuted payment of \$150,000.00, by virtue of a settlement agreement and release (clincher). According to the terms of the clincher, the \$150,000.00 payment, less attorneys' fees and costs, were to be paid over a period of 1,704.56 weeks for "*disputed permanent disability*". [R.p. 32, item number 3]

The clincher provided that although the settlement agreement and release is an agreement approved by the South Carolina Workers' Compensation Commission, the settlement agreement also would be construed as a contract, with the provisions of the same enforceable in a court of competent jurisdiction. [R.p. 34, provision (H)]. Accordingly, Padgett and Cast & Crew agreed effective October 22, 2012, Padgett was no longer an employee of Cast & Crew and he would not seek future employment with Cast & Crew. [R.p. 34, provision (I)].

Subsequently, in 2015, Padgett sought employment as a driver for a production company referred to as "*Danger Boy Production*". [R.p. 56]. Padgett was required to complete various employment documents at the time of his hire, which reflected the employer was Cast & Crew. [R.p.56]. Padgett submitted his employment hire forms to Cast & Crew, but he did not use the name "Perry Padgett" as he had utilized in 2009 when he was first hired by Cast & Crew. [R.pp.

31, 37-40, 230-231]. Rather, Respondent used the name “Frankie Padgett” when completing the employment documents. [R.pp. 56-59; 109; & 110, ll. 1-9]. Despite the clause in the 2012 clincher, which was filed with the Commission in on October 22, 2012, and precluded Padgett from seeking or obtaining future employment with Cast & Crew, Padgett began working for Cast & Crew on March 30, 2015, by utilizing the name Frankie Padgett, as opposed to Perry Padgett. [R.pp. 53-59 & 232-234].

Padgett injured his right leg and foot on May 6, 2015. Despite receiving correspondence from American Zurich Insurance Company’s adjuster and documents filed with the South Carolina Workers’ Compensation Commission designating Cast & Crew as Padgett’s employer, Padgett denied the existence of an employment relationship with Cast & Crew. [R.pp. 29, 44, 46-47, 85, ll. 5-20 & 240-241].

In particular, Padgett argues that despite completion of an application in which Cast & Crew is clearly designated as the employer [R.p. 56], he did not violate the terms of the clincher because Cast & Crew is a payroll company, Professional Employer Organization or staffing company, rather than the employer. Padgett further argues Cast & Crew merely provides payroll services and workers’ compensation insurance for various production companies; and did not direct his employment activities.

Cast & Crew argues Padgett’s employment application, check stubs and documents involving his receipt of temporary total disability compensation benefits in 2015, all designate Cast & Crew as the employer. [R. pp. 29, 44-47, 53-54, 56 & 241]. Thus, Padgett breached the contract and promise not to seek re-employment and committed fraud in order to work with Cast & Crew. [R.p. 34, provision (I); & 59]. Cast & Crew further asserts that because of Padgett’s

fraudulent actions, he should be barred from receiving temporary total disability, medical and permanent partial disability benefits.

In addition, Cast & Crew argues that no additional temporary or permanent disability benefits are available because more than 500 weeks of benefits had been paid at the time of the hearings before Commissioner Taylor and clearly the Full Commission.

Padgett testified that he has worked as a truck driver over the years, but denied working for Cast & Crew after 2012. [R.p. 85, ll.11-17]. Padgett admitted that the settlement involving his 2009 accidental injury was paid by Cast & Crew; and that Cast & Crew was designated as the employer in the settlement documents. [R.p.86-87]. Padgett also admitted when his workers' compensation claim was being processed, he received correspondence from the insurance adjuster designating Cast & Crew as his employer. [R.pp 85-89]. Nevertheless, Padgett contends he is entitled to benefits under the Act from Cast & Crew.

Padgett testified that he has always referred to himself as **Frankie Padgett**. [R.pp. 89, ll. 20 – 25; & 90-91]. However, a review of the clincher, which was signed by Padgett on October 12, 2012, reflects that the formal name of **Perry F. Padgett, Jr.**, was utilized. [R.pp. 36-37, 109 & 110, ll. 1-9].

Last, Padgett admitted that prior to his 2015 ankle injury and upon receipt of his first paycheck, Cast & Crew was designated as the employer. [R.p.113, ll. 1 – 4]. Padgett willfully, deliberately, purposefully and knowingly continued his employment with Cast & Crew while cognizant of the terms of the clincher prohibiting future employment with Cast & Crew. [R.pp.102, ll.1-5; 103, ll. 21-25 & 104, ll. 1-6].

STANDARD OF REVIEW

Judicial review of a Workers' Compensation Commission decision is governed by South Carolina Code Annotated §1-23-380 of the Administrative Procedures Act (hereinafter "the APA"); *Lark v. Bi-Lo*, 276 S.C. 130, 276 S.E.2d 304 (1981). Under the APA, a decision of the South Carolina Workers' Compensation Commission should be reversed, modified or remanded if unsupported by substantial evidence, or if substantial rights of the appellant have been affected by an error of law, or if the decision is arbitrary or capricious or characterized by an abuse or unwarranted exercise of discretion. *S.C. Code Ann. §1-23-380(A)(5) (Supp. 2014)*.

Review of the Commission's factual findings is governed by the substantial evidence standard. "A reviewing court may reverse or modify a decision of an agency if the findings, inferences, conclusions, or decisions of that agency are 'clearly erroneous in view of the reliable, probative and substantial evidence on the whole record.'" *Bass v. Isochem*, 365 S.C. 454, 467, 617 S.E.2d 369, 376 (Ct. App. 2005), quoting from *Burse v. South Carolina Dep't of Health & Envtl. Control*, 360 S.C. 135, 600 S.E.2d 80 (Ct. App. 2004); see also *Tiller v. Nat'l Health Care Ctr.*, 334 S.C. 333, 513 S.E.2d 843 (1999); see also *S.C. Code Ann. §1-23-380(A)(5)(e)*. "Substantial evidence is not a mere scintilla of evidence, nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion the administrative agency reached in order to justify its action." *Frame v. Resort Services Inc.*, 357 S.C. 520, 527-28, 593 S.E.2d 491, 495 (Ct. App. 2004); *Bass v. Isochem*, 365 S.C. at 468, 617 S.E.2d at 376. In particular, workers' compensation awards "must not be based on surmise, conjecture or speculation." *Tiller*, 334 S.C. at 339, 513 S.E.2d at 845.

In addition, a reviewing court should reverse, remand or modify a decision of the

Workers' Compensation Commission if it is affected by an error of law. *Etheredge v. Monsanto Co.*, 349 S.C. 451, 562 S.E.2d 679 (Ct. App. 2002). Case law unequivocally establishes that statutory interpretation is a question of law, and the appellate court "is free to decide matters of law with no particular deference to the fact finder." *King v. Int'l Knife & Saw - Florence*, 395 S.C. 437, 442, 718 S.E.2d 227, 229 (Ct. App. 2011); *S.C. Uninsured Employers' Fund v. House*, 360 S.C. 468, 602 S.E.2d 81 (Ct. App. 2004). Likewise, the determination of legislative intent in a statute is a matter of law. *Wehle v. S.C. Retirement Syst.*, 363 S.E. 394, 611 S.E.2d 240 (2005); *Liberty Mutual Insur. Co. v. S.C. Second Injury Fund*, 363 S.C. 612, 611 S.E.2d 297 (2005).

In summary, an appellate court must review the Commission's interpretation of a statute as a question of law and must review the Commission's application of the facts to the statute as a question of fact under the substantial evidence standard of review. *See King*, 395 S.C. at 442, 718 S.E.2d at 229.

LEGAL ARGUMENTS

I. THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION LACKS SUBJECT MATTER JURISDICTION, AND THUS, CANNOT AWARD RESPONDENT BENEFITS ARISING FROM THE ACCIDENT THAT OCCURRED ON MAY 6, 2015.

In order for the for the South Carolina Workers' Compensation Commission to exercise jurisdiction, it must be established that an employee/employer relationship exists. *S.C. Code Ann. §§ 42-1-130 and 140 (2020)*. The existence of an employer/employee relationship is jurisdictional and the reviewing court is not bound by the Commission's findings of fact upon which jurisdiction is dependent. *Harding v. Plumley, 329 S.C. 580, 496 S.E.2d 29 (1998)*.

In particular, the employment contract entered into by Respondent with Cast and Crew in 2015 prevented him from lawfully being employed by Cast & Crew. Thus, absent an employment relationship, the Commission is unable to exercise subject matter jurisdiction and award benefits in the instant case. *S.C. Code Ann. §§ 42-1-10; 42-1-130-150 (2020)*.

Because Respondent knowingly and willfully breached the provision of the judicial decree, order and contract not to seek employment or reemployment with Cast & Crew, the contract of hire or employment is deemed voidable. *Metropolitan Life Ins. Co. v. Stuckey, 194 S.C. 469, 10 S.E. 3 (1940) (actual fraud renders all contracts voidable); Regions Bank v Schmauch, 354 S.C. 648, 672, 582 S.E.2d 432, 444 (Ct. App. 2003) and Small v. Oneita Indus., 318 S. C. 553, 459 S.E.2d 306 (1995). See also, Cooper v. McDevitt-Street & Co., 260 S.C. 463, 196 S.E.2d 833 (1973)(false representation inducing employment makes the employment contract voidable at the employer's option).*

Respondent with the assistance of counsel, signed a Settlement Agreement and Release on October 12, 2012.[R.p. 36, provision “VIII”]. In provision III (G) of the clincher, the scope and construction of the Settlement Agreement and Release was agreed by the parties to be construed as an act, judgement and decree of South Carolina. [R.pp. 33-34]. Moreover, the parties agreed that the Settlement Agreement and Release shall be construed as a contract between the parties. Provision III (I), further states **the “parties agree that the [Respondent] is no longer an employee of Cast & Crew Entertainment Services, Inc. and further agrees that he will not seek employment with Cast & Crew Entertainment Services, Inc.”**. [R.p. 34].

The Settlement Agreement was filed with the Commission and approved on October 22, 2012. [R.p. 31]. *S.C. Comm. Reg. 67-803(B)(2)(a-c)(C)*. Thereafter, the payment of \$150,000.00 in settlement proceeds were dispersed to Respondent and his attorney.

There is no dispute that the elements necessary for the aforesaid contract to enforceable had established with regard to the following required factors to form a contract: ((1)) Competent parties; (2) A subject matter; (3) Consideration; (4) Neutrality of agreement; and (5) Mutuality of obligation. *Player V. Chandler, 299 S.C. 101, 382 S.E.2 891 (1989)*.

The provision prohibiting Respondent from seeking reemployment at Cast & Crew was predicated upon the elements contained in the Form 50 with respect to the August 27, 2009, work accident. In the Form 50, Respondent contended that he was permanently and totally disabled and entitled to lifetime medical treatment. Thus, Respondent’s contention that he was permanently and totally disabled is further confirmed in provision II of the Settlement Agreement and Release reflecting an allocation of Respondent’s award over the remainder of his life expectancy or 1,704.56 weeks or 32.78 years. It is important to note that the Settlement

Agreement and Release reflects Respondent demanded that the \$150,000.00 in settlement proceeds were allocated over his life expectancy. Pursuant to the Supreme Court's holding in the case of *James v. Anne's, Inc.*, 390 S.C. 188, 201, 701 S.E.2d 730, 736 (2010), Padgett had total authority and control over the proration of lump sum awards. Cast & Crew had absolutely no say in the allocation. Accordingly, Padgett was either paid 1,705.56 weeks of prorated benefits over his life or a minimum of 220.14793 weeks (\$150,000.00 divided by the compensation rate of \$681.36). *James v. Anne's*, 390 S.C. at 198, 701 S.E.2d at 735.

Respondent willfully and knowingly reapplied to Cast & Crew on March 30, 2015, by virtue of his membership with the Teamsters Union. Specifically, the withholding form dated March 30, 2015, reflects that Cast & Crew is the employer. Padgett's use of a variation of his legal name on the withholding and employment eligibility forms clearly shows an intent to avoid discovery of his true identity. [R.p. 56 & 57-6-58].

The Order of the Commission's Appellate Panel findings of fact numbers 1-5, reflect evidence of Padgett's fraudulent and conscious intent in obtaining re-employment in direct violation of the 2012 Settlement Agreement and Release. [R.pp. 6-7]. There is no evidence to the contrary which warrant any contrary findings.

The Commission found Padgett's actions without a doubt violated the terms of the Settlement Agreement, contract, judgment and judicial decree as is reflected in the Settlement Agreement filed with the Commission on October 22, 2012. [R. p. 7, findings of fact 5 & 6]. Padgett's actions are tantamount to a breach of contract accompanied by fraudulent act because of his obvious intent to deceive Appellants into re-hiring him. *See Kelly v. Nationwide Mut. Ins. Co.*, 278 S.C. 488, 298 S.E.2d 454 (1982). Under the attendant circumstances, if it is determined a contract of employment existed, such is voidable because of Padgett's actions. *Id.*

Respondent's breach reflects that there is no employee/employer relationship and as a result, the Commission lacks subject matter jurisdiction to order benefits. [R. p. 9].

Accordingly, Appellant's respectfully request the Court reverses the Full Commission's Decision and Order.

II. THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION LACKS JURISDICTION TO ORDER PAYMENT OF ADDITIONAL INDEMNITY BENEFITS OR TEMPORARY TOTAL DISABILITY COMPENSATION BECAUSE RESPONDENT HAS BEEN PAID IN EXCESS OF 500 WEEKS OF INDEMNITY BENEFITS.

Appellants argue the Commission lacks jurisdiction to order payment of additional indemnity benefits upon a plain reading of § 42-9-170. Specifically, § 42-9-170 (A) provides the following:

If an employee receives a permanent injury, as specific in Section 42-9-30 or Section 42-9-10 (B), after having sustained another permanent injury in the same employment, he is entitled to compensation for both injuries, but the total compensation must be paid by extending the period and not increasing the amount of weekly compensation, and in no case exceeding 500 weeks.

S.C. Code Ann. § 42-9-170(A) (2020)(Emphasis added).

A review of the Settlement Agreement filed on October 22, 2012 with the Commission reflects payment of 1704.56 weeks of compensation benefits for "disputed permanent disability". Clearly the monetary weeks of compensation paid to Padgett grossly exceeds the 500 week limitation as set forth in section 42-9-170(A). The 500 week limitation was most recently addressed in the case of *James v. Anne's, Inc.*, 390 S.C. 188, 198, 701 S.E.2d 730, 735 (2010). Our Supreme Court reaffirmed the 500 week limitation of benefits provided in *S.C. Ann. § 42-9-10(A) (Supp. 2009)* by emphatically concluding the 500 week limitation applies to the

maximum monetary amount one can recover under the South Carolina Workers' Act. *Id. See also, James v. Anne's, Inc., 390 S.C. 188, 199, 701 S.E.2d 730, 736.*

Assuming *arguendo* the prorated amount over Respondent's life expectancy cannot be utilized to calculate whether 500 weeks of compensation has been paid, without dispute, the \$150,000.00 was paid as permanent disability compensation benefits per the terms of the 2012 Settlement Agreement and Release. At the time of the settlement, Padgett's compensation rate was \$681.36. Accordingly, the settlement in 2012 reflected payment of 220.14793 weeks of monetary compensation benefits.

A review of the Form 19 attached to the Settlement Agreement and Release reflects payment of an additional 154.857 weeks of temporary total compensation or monetary benefits were paid as a result of Respondent's incapacity from 2009 to 2012 or a grand total of 375.00493 weeks in 2012. [R.p. 37].

Finally, because Padgett's unlawful breach with regards to reapplying for employment at Cast & Crew was not immediately discovered, Respondent was paid temporary total disability compensation (monetary) benefits from May 7, 2015 to on or about May 31, 2018. This equates to a payment of compensation benefits totaling an additional 160.1429 weeks of benefits.

In sum, between the two injuries, Respondent has been paid a total of 535.14793 weeks of compensation benefits and counting. [R. p. 9, "AWARD" section].

The 500 week maximum limitation clearly precludes the South Carolina Workers' Compensation Commission from ordering the payment of additional benefits. *James v. Anne's, Inc., supra*. As a result, the Commission's order must be reversed as a matter of law; because it lacks the jurisdiction and authority to order additional monetary benefits based upon Padgett's receipt of 535.14793 weeks of indemnity/compensation benefits.

It is anticipated Padgett will argue that the Commission acted within its authority to order payment of additional compensation benefits pursuant to the Supreme Courts holding in the case of *Medlin v. Greenville County*, 303 S.C. 44, 401 S.E.2d 667 (1991).

First, *Medlin* is distinguishable from the instant case. Because the employer in *Medlin* conceded at oral argument the employee could possibly be entitled to temporary total disability compensation benefits until maximum medical improvement is reached, the Court did not directly address the 500 week monetary limitation. Appellants do not concede Padgett is entitled to continued payment of temporary total disability compensation benefits simply because at least 535 weeks of compensation have been paid.

Second, our Court held that the adjudication of an employee being declared permanently and totally disabled denoted that there was no basis by which to award further workers' compensation benefits. *Medlin* 303 S.C. 484, 488, 401 S.E.2d 667, 668 (1991). More important, *Medlin* was decided while the Second Injury Fund was in operation and well before the Court's decision in *James v. Anne's, Inc.*, *supra*.

Third, section 42-9-170 clearly and emphatically states that the maximum payment of compensation in no case exceeds 500 weeks. *S.C. Code Ann. § 42-9-170 (2018)*. Interestingly, this section does not distinguish between payments of temporary and permanent disability compensation benefits. Again, the statute plainly states that **“the total compensation must be paid ... and in no case exceeding 500 weeks.”** *Id.* (“*Emphasis added*”).

Having paid Padgett approximately 535 weeks of compensation benefits, Appellants' cannot be ordered to pay additional compensation for injuries occurring in the same employment without the Commission exceeding its statutory authority. *S.C. Code Ann. § 42-9-170 (2018)*.

III. THE COMMISSION LEGALLY ERRED AND ABUSED ITS DISCRETION IN FINDING PADGETT IS ENTITLED TO TEMPORARY TOTAL DISABILITY COMPENSATION BENEFITS AND PROSPECTIVELY DETERMINING A PERMANENT PARTIAL, PERMANENT TOTAL AND/OR WAGE LOSS AWARD CAN BE DETERMINED AT A LATER DATE ONCE MAXIMUM MEDICAL IMPROVEMENT HAS BEEN ACHIEVED.

As discussed above, Padgett has been paid 535 weeks of monetary benefits. As such, Padgett is not entitled to a wage loss or permanent disability award. *S.C. Code § 42-9-170*.

Because the cases of *Medlin, supra., and Hopper v. Firestone stores, et al., 222 S.C. 143, 72 S.E.2d 72 (1952)* were either decided prior to or during the operation of the South Carolina Second Injury Fund, the language in § 42-9-170 is dispositive with regard to the 500 week maximum monetary limitation on benefits. This fact is confirmed in a review of section 42-9-10, which states that there is a 500 week limitation on compensation benefits. The only instances in which the 500 week limitation can be exceeded is when an employer is subject to Second Injury Fund recovery or the Claimant sustains injuries resulting in paraplegia, quadriplegia or permanent physical brain damage. *S.C. Code Ann. §42-9-10 (2018)*. See also, *S. C. Code Ann. §42-9-410(d)(2018)*.

Padgett's 2015 accident occurred after the abolishment of the South Carolina Second Injury Fund on July 1, 2007. Because Padgett has not suffered an injury resulting in paraplegia, quadriplegia or permanent physical brain damage, he is subject to the 500 week limitation as is mandated by the Act.

Accordingly, it is respectfully submitted that the South Carolina Workers' Compensation Commission decision must be reversed.

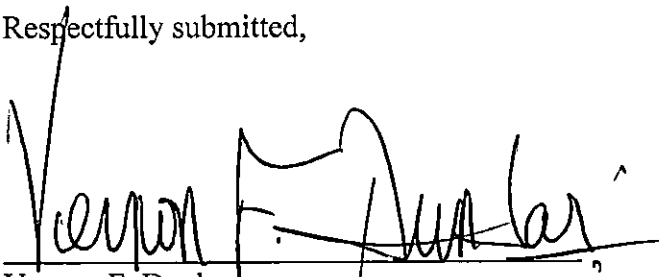
CONCLUSION

Based upon the forgoing arguments, it is respectfully submitted that the South Carolina Workers' Compensation Commission abused its discretion by ignoring numerous findings of fact of the Hearing Commissioner and committed an error of law in ordering the payment of temporary total disability compensation benefits and further medical treatment.

Padgett has been paid in excess of 535 weeks of compensation benefits, despite the 500 week monetary cap or limitation on the payment of compensation benefits. Appellants respectfully request to be relieved of its now extinguished and erroneously perceived obligation to Padgett after he has been paid in excess of 535 weeks of compensation benefits.

Despite the overwhelming evidence of fraud committed by Padgett in altering his identity in his employment application, Appellants did not initially seek to terminate Respondent's receipt of medical benefits. However, in reviewing the Appellate Panel's order finding Padgett acted with an intent to deceive coupled with the Commission's lack of jurisdiction, Appellants also seek the termination of a perceived obligation to provide Respondent with medical treatment.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Vernon F. Dunbar", is written over a horizontal line. The signature is stylized and cursive.

Vernon F. Dunbar
Post Office Box 2980
Greenville, South Carolina 29602
55 East Camperdown Way, Suite 300 (29601)
(864) 239-4000

July 27, 2020

Attorney for Appellants

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Appellate Case No. 2019-001254
WCC File No. 1506114

RECEIVED

JUL 29 2020

SC Court of Appeals

Frankie Padgett, Claimant Respondent,

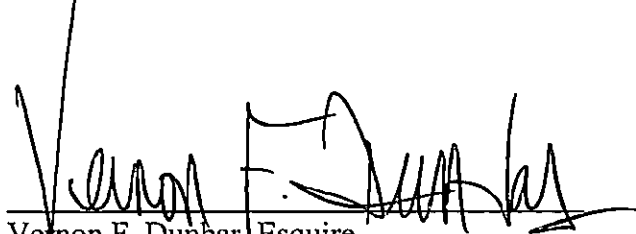
v.

Cast & Crew Entertainment Services, Inc., Employer and
American Zurich Insurance Company, Carrier Appellants,

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Final Brief and Final Reply Brief of Appellants comply with Rule 211(b), SCACR.

July 27, 2020



Vernon F. Dunbar, Esquire
McAngus, Goudelock & Courie LLC
Post Office Box 2980
Greenville, South Carolina 29602
(864) 239-6735
Attorneys for Appellants

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Appellate Case No. 2019-001254
WCC File No. 1506114

RECEIVED

JUL 29 2020

SC Court of Appeals

Frankie Padgett..... Respondent,

v.

Cast & Crew Entertainment Services, Inc.,..... Employer,

and

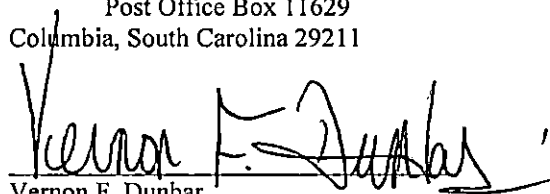
American Zurich Insurance Company c/o
Zurich North America, Appellants,

PROOF OF SERVICE

I hereby certify that I have this 27th day of July 2020, caused to be served a copy of the Appellants' Final Brief and Final Reply Brief via electronic service a copy of same, as follows:

Stephen B. Samuels, Esquire
Samuels Reynolds Law Firm
1320 Richland Street
Columbia, South Carolina 29201

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211



Vernon F. Dunbar
McAngus, Goudelock & Courie LLC
Post Office Box 2980
55 East Camperdown Way, Suite 300 (29601)
Greenville, South Carolina 29602
(864) 239-4000
Attorneys for Appellant
July 27, 2020

Reply To

VERNON F. DUNBAR
Direct Dial: (864) 239-6735
vernondunbar@mgclaw.com

July 27, 2020

RECEIVED
JUL 29 2020
SC Court of Appeals

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

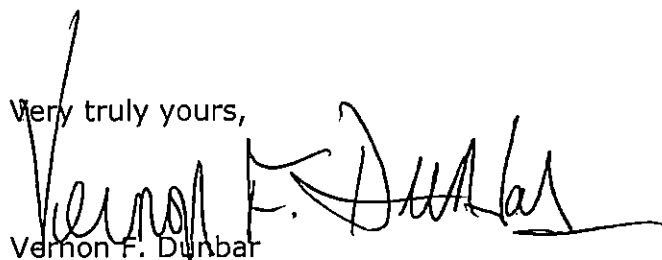
RE: Frankie Padgett v. Cast & Crew Entertainment Services, Inc. and American
Zurich Insurance Company c/o Zurich North America
Date of Accident: May 6, 2015
Appellate Case No: 2019-001254
WCC File No.: 1506114
Our File No.: 20216.17069

Dear Ms. Kitchings:

Please see enclosed the certificate of counsel and certificate of service reflecting that we have served the Final Brief and Final Reply Brief of Appellants upon Stephen B. Samuels, Esquire, counsel for Respondent.

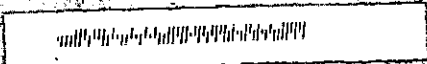
Pursuant to the Court's rule, I am also placing into regular mail the unbound and original copy of the Final Appellants Brief and Reply Brief. If you have any questions, please do not hesitate to contact me.

With kindest regards, I remain

Very truly yours,

Vernon F. Dunbar

VFD/_amc

Enclosures: Brief, Reply Brief and certificates of service and counsel
Cc: Stephen B. Samuels, Esquire
Shana'e Montgomery, Zurich North America



mgc | INSURANCE
DEFENSE

POST OFFICE BOX 790
GREENVILLE SC 29602

RECEIVED

JUL 29 2020

SC Court of Appeals

20216.17069/VFD/_amc
The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211