

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM THE SOUTH CAROLINA

SEP 14 2020

WORKERS COMPENSATION COMMISSION

SC Court of Appeals

★ VOLUNTARY REMANDED ★

BY THE APPELLATE PANEL

Appellate Case No. 2019-000369
Formerly 2018-001364
W.C.C. File Nos. 1322451, 1319203, 1420487

Terry H Capone,

Appellant,

v.

City of Columbia, Employer, and
Companion Third Party Administrator, LLC, Carrier,

Respondents,

**AMENDED DESIGNATION OF MATTER TO BE
INCLUDED IN THE FINAL RECORD**

Appellant proposes the following Evidence be included in the Record on Appeal without prejudice, as an exact copy of this media disc was provided and accepted by the SC Workers' Compensation Commission as a part of the record for the Appellate Panel Voluntary Remand and to the Defendants and the Court prior to the Voluntary Remand in the associated Appellate Case 2018-001364, which severely prejudiced the Appellant right to due process and the action caused irreparable harm, was arbitrary, capricious, abuse of discretion and was not in accordance with law, was taken without procedures required by law, and failed to address "any" of the Appellants claims and to incur excessive court cost and fees associated with filing a new appeal under a new appellate case number referenced above.

When a plaintiff brings claims under the APA, the reviewing court “sits as an appellate tribunal.” *Am. Bioscience, Inc. v. Thompson*, 269 F.3d 1077, 1083 (D.C. Cir. 2001), and the “entire case on review is a question of law and only a question of law,” *Marshall Cty. Health Care Auth. v. Shalala*, 988 F.2d 1221, 1226 (D.C. Cir. 1993).

Administrative law requires that an agency’s decision set forth its reasons for decision, and failure to do so render the agency’s decision arbitrary and capricious. *Remmie v. Mabus*, 898 F. Supp. 2d 108, 119 (D.D.C. 2012) (*Tourus Records, Inc. v. Drug Enforcement Admin.*, 259 F.3d 731, 737 (D.C. Cir. 2001)).

See also *Macktal v. Chao*, 286 F.3d 822, 826 (5th Cir. 2002) (“An agency may not reconsider its own decision if to do so would be arbitrary, capricious, or an abuse of discretion.”).

A proper administrative record must contain “all documents and materials directly or indirectly considered by the agency.” *Bar MK Ranches v. Yuetter*, 994 F.2d 735, 739 (10th Cir. 1993).

The Appellants revised **MEDIA DISC** Titled: TCAPONE 10/10/2018, now REDACTED contains the following Content:

TCAPONE 10/10/2018 -Pages 1- 73

Page 1-Cover letter S.C. Workers’ Compensation Commission Ms. Amy Bracey Judicial Director

Page 2- WCC FILE #1322451 WCC Form #59 AMENDED APPELLANTS INFORMAL BRIEF-October 10, 2018

Page 3- WCC FILE #1319203 WCC Form #59 AMENDED APPELLANTS INFORMAL BRIEF-October 10, 2018

Page 4- WCC FILE #1420487 WCC Form #59 AMENDED APPELLANTS INFORMAL BRIEF-October 10, 2018

Page 5-73 –SC WCC File# 1322451, #1319203, 1420487 Amended Informal Appellant Brief

EXHIBITS 10/10/2018 pages 1-3181

APPELLANT EXHIBIT -AE#1: Pages 1-417

February 15, 2018 Pre-hearing brief for WCC FILE No.: 1322451
Notices of Witness and APA Submissions

APPELLANT EXHIBIT -AE#2: Pages 418-487

February 13, 2018 Pre-hearing brief for WCC FILE No.: 1319203
Notices of Witness and APA Submissions

APPELLANT EXHIBIT -AE#3: Pages 488-684

January 24, 2018 Pre-hearing brief for WCC FILE No.: 1420487
Notices of Witness and APA Submissions

APPELLANT EXHIBIT -AE#4: Pages 685-1063

July 18, 2018 Appellate Case No.: 2018-001364
W.C.C. File Nos. 1322451, 1319203, 1420487
Initial Brief of Appellate

APPELLANT EXHIBIT -AE#5: Pages 1064-1338

August 11, 2018 Appellate Case No.: 2018-001364
W.C.C. File Nos. 1322451, 1319203, 1420487

Appellate Return To Motion To Dismiss Appeal - Crime Fraud Exception, Fraud On The Court, "Active Concealment For Fraud In Real Property" 15-3-670 (C) (1) (2) And Others regarding the above-referenced matters.

APPELLANT EXHIBIT -AE#6: Pages 1339-1605

September 21, 2018 WCC File Nos.: 1322789, 1719990, 1423445, 1519702, 1503655
Object to the Defendants Attorney's office requesting my providers under threat, duress and coercion of a Subpoena provide them with my protected health information based on the fact that their request has been made under an Unlawful and Invalid procedures and law. In addition, it is in direct violation Pursuant 67-214, 67-215, Federal and South Carolina Rules of Civil Procedure to include 45 C.F.R 164.512 9 (3) (A) (HIPAA) , Constitutional protected and Fundamental rights guaranteed and any other authority's of law. The hearing in this matter was held July 2, 2018, that included an additional forty- Five (45) days to request additional discovery and present evidence beginning July 3, 2018 and ended August 16, 2018, presumably 11:59 pm when the record closed and is a case of fraud.

October 1, 2018 WCC File Nos.: 1322789, 1719990, 1423445, 1519702, 1503655
Memorandum of Points and Authorities in this Notice of Motion and Motion to Quash All Letters And Subpoenas (*All Defective Authorizations and Combined Authorizations*) Requesting Protected Health Information And Provide An Order For Protection And Sanctions Based On Fraud Upon The Court, *Denial Of Procedural Due Process* and Others And Do What The Law Commands, In The Above Referenced Matters, Pursuant to R 19-11-95, 42-15-95, 42-9-440, 67-214, 67-215, 67-1301, South Carolina Rules of Civil Procedure 11(A), 16, 41(B), 45(2)(B), 3 (A) (I) (III) (IV), The Health Insurance Portability and Accountability Act of 1996 (HIPAA) and accompanying regulations, 45 CFR § 164.501, 45 CFR § 164.502 (a) (2) (II), 45 CFR § 164.506-512, 45CFR § 164.512(e), 45 C.F.R. § 164.524, 45 CFR §164.532 and others

APPELLANT EXHIBIT -AE#7: Pages 1606-1637

October 5, 2018 W.C.C. File Nos. 1322451, 1319203, 1420487

Notice to Take Judicial Notice

APPELLANT EXHIBIT-AE#8: Pages 1638-3181

August 6, 2018 WCC File Nos.: 1322789, 1719990, 1423445, 1519702, 1503655
Amended Pre-Hearing Brief and Notice of Witnesses and Written Medical Reports

2015 REDACTED FILES HARD COPIES

APPELLANT EXHIBIT-AE#9

December 2, 2015 Decision and Order South Carolina Workers' Compensation Commission
WCC File Nos.: 1319203, 1322451, 1420487 Hearing Held August 21, 2015 -Excerpts: "The Claimant seeks benefits under the South Carolina Workers' Compensation Act based upon alleged accidental injuries occurring on **June 24, 2013, wherein he injured his toe**, (WCC File No. 1420487), on October 12, 2013, in which he re-injured his bilateral hands/wrist (WCC File No. 1319203), and on November 7, 2013 (WCC File No. 1322451), Where he alleges aggravation of a psychological injury, all while in the employ of the Employer/Defendants. Therefore, South Carolina Workers' Compensation Commission has jurisdiction of these cases."(page. 2) p. 1-20

APPELLANT EXHIBIT-AE#10

November 23, 2015 Worker's Compensation Order-James, Wendy M. wmjames@columbiasc.et
Excerpts': "Dear Mr. Capone....Enclosed please find a copy of the Order we have been asked by the Workers' Compensation Commission to prepare. As listed in the Commissioner's preference"....." **Claimant alleges that on June 24, 2013**,(page.2) he was diagnosed with toe fungus occurring June 24, 2013(WCC File No. 142087)"..." Wendy M. James Paralegal Post Office Box 667 Columbia, SC 29202 (803) 737-4242 (803) 737-4250 Fax." p.1-21

APPELLANT EXHIBIT-AE#11

SC Workers Compensation Commission REQUEST FOR PROPOSED ORDER

WCC File Number: 1322451, 1319203, 1420487

DOI: #1319203-10/12/13, #1322451-11/07/13, **#1420487-06/24/14** (page. 1)

Excerpts: "Ms. Thye, please draft the order consistent with the below findings and return to this office within 30 days." "Matters to include in the Order:

1. APA Submissions
2. Stipulations
3. Statement of the Case (contentions of the parties-stated concisely)
4. Evidence of the Case (synopsis of the evidence-including testimony and medical reports)
5. Findings of Facts [numbered] (Do **not** delete any of the above findings.) The prevailing party may add to support the decision, except regarding credibility unless you have been so instructed.
6. Conclusions of law (cite applicable statutory sections and case law)

7. Award

Do not address credibility in the Order, unless it has been addressed in the preceding Order Notes.

Commission Gene McCaskill” p. 1 - 6

APPELLANT EXHIBIT-AE#12

On Friday, August 21, 2015 Transcript of Proceedings South Carolina Compensation Commission WCC No. 1319203, 1322451 & 1420487 p. 1-57

APPELLANT EXHIBIT –AE#13

R08 JUD - APAs - Evidence - 12-4-2015 - WCC 1420487 BOOK 1 of 2 p. 1-587

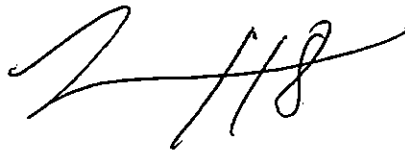
APPELLANT EXHIBIT –AE#14

R08 JUD - APAs - Evidence - 12-7-2015 - WCC 1420487 Book 2 of 2 p. 1-401

Note: All stated herein have been provided to the defendants through their Attorneys and Court through previous submittals without prejudice.

I certify that this designation contains no matter which is irrelevant to this appeal

Terry H Capone, Pro Se Appellant.



Mr. Terry H Capone
Fire Battalion Chief-Retired
130 Summerlea Drive
Columbia, South Carolina 29203
(803) 622-6578
tcapone@liberty.edu
Pro Per, Appellant

September 7, 2020

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

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SC Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS COMPENSATION COMMISSION
★VOLUNTARY REMANDED ★
BY THE APPELLATE PANEL

W.C.C. File Nos. 1322451, 1319203, 1420487
Appellate Case No.: 2018-000369 associated with 2018-001364

PROOF OF SERVICE

Terry H Capone, Claimant,

Appellant,

v.

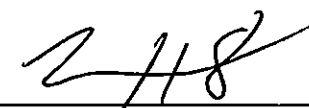
City of Columbia, Employer, and
Companion Third Party Administrator, LLC, Carrier, Respondents.

Terry H Capone, of Richland County, Pro Se Appellant.

I certify this 14TH day of September 2020, that I have served a copy of the **Supplement** to the Designation of Matters of **revised** Appellant Exhibits AE#1-8 now redacted on Compact Media Disc to accompany the Final Brief and Appellant Exhibit#9-14 that was provided in hard copy to this Court and copy to Respondents on July 24, 2020, to be included in the record on appeal by depositing a copy in the United States Mail, first class postage pre-paid, certified or by personal service addressed to the following:

Cynthia C. Dooley, Esquire
Carmelo Barone Sammataro, Esquire Attorneys for Respondents
TURNER PADGET GRAHAM & LANEY P.A.
P.O. Box 1473
Columbia, SC 29202

September 14, 2020

By: 
Mr. Terry H Capone
130 Summerlea Drive
Columbia, SC 29203
(803) 622-6578
Email: tcapone@liberty.edu
APPELLANT, PRO PER



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SEP 14 2020

SC Court of Appeals

September 7, 2020

U.S. MAIL DELIVERY OR PERSONAL SERVICE

The Honorable Jenny Abbott Kitchings, Clerk
South Carolina Court of Appeals,
1220 Senate Street
Columbia, SC 29201

Re: Terry Capone v. City of Columbia and Companion Third Party Administrator, LLC
Appellate Case No.: 2019-000369 / Associated Case: 2018-001364
W.C.C. File Nos. 1322451, 1319203, 1420487

Dear Ms. Kitchings:

Enclosed please find the **supplement** to the Designation of Matters of **revised** Appellant Exhibit AE#1-8 now **REDACTED** on Compact Media Disc (voluminous exhibit more than 3000 pages) to accompany the original and one complete copy of the Final Brief and Appellant Exhibit AE#9-14 that was provided in hard copy to this Court on July 24, 2020, to be included in the Record on Appeal and proof of service regarding the above referenced matter.

I am not a lawyer. Thank you for your assistance with this matter, please contact me if you have any questions. Thank you for your consideration.

With The Highest Regards,

Enclosure(s) as Stated
Cc: Cynthina C Dooley
Attorney for Respondents

Mr. Terry H. Capone
Fire Battalion Chief-Retired
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