

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
APPELLATE PANEL

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

RECEIVED
Sep 24 2020
SC Court of Appeals

Terry H Capone, Claimant.....Appellant,

v.

City of Columbia, Employer, and

Companion Third Party Administrator, LLC, Carrier,Respondents.

APPELLANT'S NOTICE OF MOTION REQUESTING PERMISSION FROM THE COURT TO ACCEPT THE AMENDED DESIGNATION OF MATTER FILED WITH THIS COURT SEPTEMBER 14, 2020, DUE TO THE DECISIONS/ JUDGMENTS IN THIS MATTER BEING VOID AND PRODUCED BY FRAUD ON THE COURT AND OTHER VIOLATIONS OF LAW UNDER THE APA.

COMES NOW Appellant, Terry H Capone Under the Administrative Procedure Act, hereby moves the court by Notice of Motion Requesting Permission From The Court To Accept the Amended Designation of Matter Filed with This Court September 14, 2020, Due To Being Present and Accepted Below, Fraud On The Court and Other Violations of Law.


For the reasons herein, plaintiffs' motion is so the court will have a full record that was presented below upon which to decide the legal issue of the above referenced claim that lies at the heart of a **Void Decision/ Judgment**. Time limitation does not apply where the judgment is based on a fraudulent return. (*Washko v. Stewart*, supra, p. 318; *Richert v. Benson Lbr. Co.*, supra, p. 677.).

This motion is based on the Appellants Amended Designation of Matter with Exhibits last filed with this Court 9/14/2020; the accompanying memorandum of points And authorities, the Declaration of Terry H. Capone and exhibits thereto, filed herewith as well as upon such further briefs, argument or other information as may be submitted to the Court for review.

A Party Affected by VOID Judicial Action Need Not APPEAL. State ex rel. Latty, 907 S.W.2d at 486. It is entitled to no respect whatsoever because it does not affect, impair, or create Legal rights." Ex parte Spaulding, 687 S.W.2d at 745 (Teague, J.,concurring). If an appeal is taken, however, the appellate court may declare void any orders the trial court signed after it lost plenary power over the case, because a void judgment is a nullity from the beginning and is attended by none of the consequences of a valid judgment.

“Obviously a judgment, though final and on the merits, has no binding force and is subject to collateral attack if it is wholly void for lack of jurisdiction of the subject matter or person, and perhaps for excess of jurisdiction, or where it is obtained by extrinsic fraud. [Citation]”(7 Witkin,, Cal. Procedure, supra, Judgment, § 286, p. 828).

Dated: September 24, 2020

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

MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

Appellant under the Administrative Procedure Act (APA) request that the Court by Notice of Motion Requesting Permission From The Court To Accept the Amended Designation of Matter Filed with This Court September 14, 2020, Due To Being Presented and Accepted/ Revested by the South Carolina Workers Compensation Commission, Fraud On The Court and Other Violations of Law to include Due process.

What is REVEST: To vest again. A seisin is said to revest, where it is acquired a second time by the party out of whom it has been divested. 1 *Rop. Husband & Wife*, 353. It is opposed to “divest. Black’s Law Dictionary 2nd Edition p. 1035

SWORN DECLARATION

STATE OF SOUTH CAROLINA §

COUNTY OF RICHLAND §

Pursuant to 28 U.S.C. 1746, I Terry H Capone, declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief and In opposition, Appellant states as follows:

1. Respondents had files a motion to dismiss the Appellants appeal as untimely, after careful consideration, this Court denied the motion, and was filed June 27, 2019 See, Motion Exhibit #1.

In support of the above the Appellant continues to assert the South Carolina Workers Compensation Commission December 2, 2015 decision/ Order and all subsequent are void, procured by Fraud Upon the Court, other violations of law under the APAP, to include right to due process of law.

2. I was never informed by the South Carolina Workers’ Compensation Commission of the process or procedure my employer/carrier needed to follow before stopping compensation, and was due to Fraud On the Court/Tribunal and denial of Procedural Due Process and Equal Protection under the color of law.

3. 10/29/2015 My Email that I not only wanted to appeal ,but that I thought my case was admitted. I believe I "substantially complied" with giving notice of appeal at that time. The Commission and Attorney for the City was communicating with me by email in an informal fashion. **See, Motion Exhibit # 2.**
4. Fits squarely into the case of Cit of Columbia Fire Captain James "Woody" Goodman case Goodman v. City of Columbia 318 S.C. 488 (S.C. 1995) 458 S.E.2d 531. **See, Motion Exhibit #3.**
5. The failure of The Employer/Carrier to provide payment prior to the 79th day of injury in South Carolina Workers Compensation procedures where a denial of due process
6. The Illegal stopping of the South Carolina Workers Compensation benefits without proper procedures and service was an illegal taking and a denial of due process
7. SC WCC 67-504 (A)(B). Employer failed to follow procedures for stopping benefits; (A) employers did not file form 15 "immediately" with the claims Department and/or serve form 15 after compensation was terminated, and employer did not serve the form 15 "immediately" on the claimant pursuant to 67-211 with documentation attached as to the reason for termination or suspension.(B) to terminate or suspend compensation pursuant to section 42-9-260(B)(2) the Employer's representative "must" obtain a signed form 17, they did not complete these Services. INEFFECTIVE SERVICE OF PROCESS NEVER COMPLETED! **See, Motion # 4 and #5**

Cushman v. Shinseki, 576 F.3d 1290 (Fed. Cir 2009). The due process clause of the Fifth Amendment only applies to property interest. It is well settled that an individual's disability benefits are protected that may not be discontinued without process of law.

Even if employer could have stopped workers' compensation claimant's temporary total disability benefits after claimant was cleared by orthopedic surgeon to return to work without restrictions, employer failed to follow procedures for stopping benefits; employer did not file and serve Form 15 for at least 18 days after compensation was terminated, and employer failed to attach supporting documentation to form. Martin v. Rapid Plumbing (S.C. App. 2006) 631 S.E.2d 547, 369 S.C.278, rehearing denied. Workers' Compensation ⇨ 2021 p.439

Stopping payment on temporary award-This rule and Code 1962 § 72-352 contemplate that if the insurance carrier desires to stop further payments of compensation under a temporary award., application should be made to the commission for permission to do so and the employee should receive notice of application. Halks v.Rust Engineering Co. (1946) 208 SC 39, 36 SE2d 852. Workers' Compensation ⇨2013. P. 439

The Supreme Court stated in *Abbott Laboratories v. Gardner*, 387 U.S. 136, 87 S. Ct. 1507, 18 L. Ed. 2d 861 (1967), that "a survey of our cases shows that judicial review of a final agency action by an aggrieved person will not be cut off unless there is a persuasive reason to believe that such was the purpose of Congress." Id. at 140, 87 S. Ct. at 1511.

As the Supreme Court told us in *Goldberg v. Kelly* 397 U.S. 254(1970, in almost every setting where important decisions turn on questions of fact, due process requires an opportunity to confront and cross-examine adverse witnesses.

"We have previously recognized that entitlement to workers' compensation benefits constitutes a property interest". *Orszula v. Orszula*, 292 S.C. 264, 356 S.E. (2d) 114 (1987).

Goodman v. City of Columbia 318 S.C. 488 (S.C. 1995) 458 S.E.2d 531
Fire Captain James "Woody" Goodman (White) retired after 25 years of service as a Fire Captain with the City of Columbia Fire Department. Files a worker's comp claim against City of Columbia (the City) claiming an onset of severe mental stress and depression caused by job stress. Who wrote a letter of his desire to appeal, finding his letter constituted substantial compliance S.C. Code Ann 42-17-50."..."The letter unquestionably gave notice of intent to appeal". [I guess White Privilege]?

Obviously a judgment, though final and on the merits, has no binding force and is subject to collateral attack if it is wholly void for lack of jurisdiction of the subject matter or person, and perhaps for excess of jurisdiction, or where it is obtained by extrinsic fraud. [Citation]"(7
Witkin,, Cal. Procedure, supra, Judgment, § 286, p. 828

Whenever any officer of the court commits fraud during a proceeding in the court, he/she is engaged in "fraud upon the court". In *Bulloch v. United States*, 763 F.2d 1115, 1121(10th Cir. 1985), the court stated "Fraud upon the court is fraud which is directed to the judicial machinery itself and is not fraud between the parties or fraudulent documents, false statements or perjury.... It is where the court or a member is corrupted or influenced or influence is attempted or where the judge has not performed his judicial function --- thus where the impartial functions of the court have been directly corrupted.

It is fundamental that no judgment or order affecting the rights of a party to the cause shall be made or rendered without notice to the party whose rights are to be affected." *Tyron Fed. Sav. & Loan Ass'n v. Phelps*, 307 S.C. 361, 362, 415 S.E.2d 397, 398 (1992). Generally, a person against whom a judgment or order is taken without notice may rightly ignore it and may assume that no court will enforce it against his person or property. The requirements of due process not only include notice, but also include an opportunity to be heard in a meaningful way, and judicial review. *Grannis v. Ordean*, 234 U.S. 385, 394 (1914) ("The fundamental requisite of due process of law is the opportunity to be heard."); *S.C. Dep't of Soc. Servs. v. Holden*, 319 S.C. 72, 78, 459 S.E.2d 846, 849 (1995).

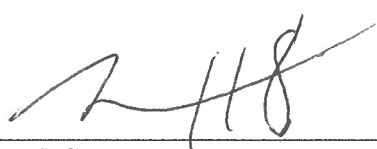
II. ARGUMENT

1. **The Motion to Request Motion Requesting Permission From The Court TO Accept The Amended Designation of Matter Filed With This Court September 14, 2020, Should be //Granted//, Due to the Decision/ Judgments in this Matter being Void and Produced By Fraud On The Court/ Tribunal and Other Violations of Law Under the APA.**
2. **Because matters where presented and accepted below this motion conforms to rules, Sec.(Rule 210 (c), S.C.A.C.R.,)**
3. **The Designation of Matter needed to be Amended due to the error of this Court to not allow on the first instance, as the matters where presented and accepted below**
4. **When a Appellant brings a claim before this Court, from the South Carolina Workers Compensation Commission, he/ she brings it under the Administrative Procedures Act (APA) applies, even if not mentioned, expressed or implied.**
5. **This case is at an end, there's no tie and the evidence points to one thing and one things only, the Decision and order is VOID.**

III. CONCLUSION PRAYER AND RELIEF REQUEST

For the forgoing reasons, due to the “extraordinary circumstances” and actual facts Appellants Notice of Motion Requesting Permission From The Court To Accept The Amended Designation of Matter Filed With This Court September 14, 2020, Should be //Granted//, Due to the Decision/ Judgments in this Matter being Void and Produced By Fraud On The Court/ Tribunal and Other Violations of Law Under the APA should be Granted and *Deny* Any Opposition to this Motions or a remand to the Agency which would to be Futile and has continued to deny Due process, Procedural Due process, Substantive Justice and Equal protection under the color of Law .

Executed on this date September 24, 2020
Dated: September 24, 2020
Enclosures Exhibits 1-5 as stated.

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

MOTION
EXHIBIT

#1

The South Carolina Court of Appeals

Terry Capone, Appellant,

v.

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

Appellate Case No. 2019-000369

ORDER

Respondents have filed a motion to dismiss this appeal as untimely. After careful consideration, the motion is denied.


FOR THE COURT

Columbia, South Carolina

cc: Terry Capone
Cynthia C. Dooley, Esquire
Carmelo Barone Sammataro, Esquire

FILED

June 27, 2019

MOTION
EXHIBIT

#2

7/18/2020

Mail - Capone, Terry - Outlook

RE: TCAPONE 1420487 , 1319203, 1322451 Appeal Information

Thye, Dana <dmthye@columbiasc.net>

Thu 10/29/2015 8:20 AM

To: Capone, Terry <tcapone@liberty.edu>; Lindler, Kellie <klindler@wcc.sc.gov>; Falls, Kim <kfalls@wcc.sc.gov>

Cc: James, Wendy M <wmjames@columbiasc.net>

Mr. Capone, what you received are the findings of the Commissioner that I have been asked to put into a formal order. I will prepare the Order as instructed and submit to the Commissioner with a copy to you. When the Commissioner signs an Order, you will have the opportunity to appeal that Order as it then decides the case. I would continue to encourage you to seek counsel to assist you on appeal.

Dana Thye

Sent from my Verizon Wireless 4G LTE smartphone

----- Original message -----

From: "Capone, Terry" <tcapone@liberty.edu>

Date: 10/29/2015 12:05 AM (GMT-05:00)

To: "Lindler, Kellie" <klindler@wcc.sc.gov>, "Falls, Kim" <kfalls@wcc.sc.gov>

Cc: "Thye, Dana" <dmthye@columbiasc.net>, "James, Wendy M" <wmjames@columbiasc.net>

Subject: TCAPONE 1420487 , 1319203, 1322451 Appeal Information

Hello,

I received the notice this evening with the findings of the hearing, I am confused, as I thought carpal tunnel was an admitted injury and Dr Greens most recent assessment & date was not included in the

MOTION
EXHIBIT

#3

Goodman v. City of Columbia

318 S.C. 488 (S.C. 1995) • 458 S.E.2d 531
Decided May 30, 1995

24250

Heard December 6, 1994

Decided May 30, 1995

489 Appeal From Circuit Court, Richland County, Carol Connor, Judge. *489

James L. Bell of the *Bell Law Firm, P.A.*, Charleston, for petitioner.

Kenneth E. Gaines of the *Office of the City Attorney*, Columbia, for respondent.

WALLER, Justice:

We granted certiorari to review the opinion of the Court of Appeals in *Goodman v. City of Columbia*, Op. No. 93-UP-221 (filed August 4, 1993; amended opinion refiled November 3, 1993 and withdrawn; amended opinion refiled November 15, 1993). We reverse.

FACTS

Petitioner, James W. Goodman filed a workers' compensation claim against the City of Columbia (the City) claiming an onset of severe mental stress and depression caused by job stress. The Single Commissioner denied the claim for benefits. Petitioner then applied for review by the Full Commission. The City moved to dismiss petitioner's motion because petitioner had failed to timely file and perfect his appeal, resulting in a lack of jurisdiction. The Commission denied the City's motion to dismiss.

The City appealed the denial of the motion to dismiss to the circuit court. The circuit court affirmed the Commission's finding. The City filed and served a notice of appeal on April 20, 1992.

The Court of Appeals initially affirmed the decision of the circuit court. On rehearing, however, it vacated the orders of the Commission and the circuit court. We granted certiorari to review the decision of the Court of Appeals.

ISSUE

490 Did the Court of Appeals err in holding that the Commission was without jurisdiction to consider petitioner's application for review. *490

DISCUSSION

In this case, petitioner received the Single Commissioner's order on September 27, 1990. Petitioner wrote the Commission on October 2, 1990, expressing his desire to appeal "all issues denied by the Single Commissioner" and requesting the appropriate forms. On October 4, 1990, petitioner received a Form 30 in which to perfect his appeal, and he also received a letter establishing October 14, 1990, as the deadline date to file the Form 30. The completed Form 30, along with the filing fee was filed with the Commission on October 17. The Commission denied the City's motion to dismiss, finding that petitioner's letter of October 2nd constituted substantial compliance with [S.C. Code Ann. § 42-17-50](#).

Pursuant to § 42-17-50, a party seeking review of a decision of a Single Commissioner may have the decision reviewed by the Commission if an application for review is made to the Commission within fourteen days from the date when notice of the decision is given.

Reg. 67-701 further elaborates by stating, in part:

Either party may request Commission review of the Hearing Commissioner's decision by filing the original and eight copies of a Form 30, Request for Commission Review . . . within fourteen days of the day the Commissioner's order is received. The fourteen day period is jurisdictional. The Commission will not accept for filing a Form 30 that is not postmarked or delivered to the Commission by the fourteenth day from the date of receipt of the Hearing Commissioner's order.

Petitioner contends that the Court of Appeals erred by holding that the October 2, letter did not substantially comply with the Commission's requirements for review of a hearing commissioner's decision. We agree.

Regulations authorized by the legislature have the force of law. *Faile v. S.C. Employment Security Commission*, 276 S.C. 536, 230 S.E.2d 219 (1976). Although a regulation has the force of law, it may not alter or add to a statute. *Society of Professional Journalists v. Sexton*, 283 S.C. 563, 324 S.E.2d 313 (1984). In this case, § 42-17-50 confers jurisdiction upon the Commission and provides for fourteen days to apply for review. Reg. 67-701 adds the requirement *491 of applying for review with a particular form, thereby adding to the statute. Insofar as Reg. 67-701 increases the threshold requirements of § 42-17-50, the specifications set forth in the statute must prevail.

Petitioner's letter unquestionably gave notice of intent to appeal, and the Commission, in its discretion chose to treat the letter as an application for review. We find that great deference should be given to the Commission's deciding that petitioner substantially complied with the mandates of § 42-17-50. *Dunton v. S.C. Board of Examiners in Optometry*, 291 S.C. 221, 353 S.E.2d 132 (1987) (The construction of a statute by the agency charged with its administration will be accorded the most respectful consideration and will not be overruled absent compelling reasons). Accordingly, we reverse the decision of the Court of Appeals.

REVERSED.

CHANDLER, C.J., and TOAL and MOORE, JJ., concur.

FINNEY, J., dissents in separate opinion.

FINNEY, Justice, dissenting:

I respectfully dissent. In my opinion, the Commission acted well within its powers in promulgating 25A S.C. Code Ann. Reg. 67-701 requiring that all appeals be filed on a Form 30, and providing that timely service of a Form 30 is a jurisdictional prerequisite to an appeal. Since petitioner's letter was not on a Form 30 and did not

contain the grounds for appeal¹, there was no appeal filed within the jurisdictional time limit and the Court of Appeals properly vacated the orders.

¹ See Reg. 67-701(A)(3).

The Commission is authorized to promulgate regulations implementing statutes. The regulations must be consistent with the statutes being implemented. *S.C. Code Ann. § 42-3-30* (1985). Regulation 67-701 implements *S.C. Code Ann. § 42-17-50* (1985 and Supp. 1993), which provides an award shall be reviewed "if an application for review is made" within fourteen days. Unlike the majority, I conclude that the Form 30 promulgated by the Commission implements the statutory mandate of "an application for review." Further, 492 essentially all *492 litigation before the Commission is conducted pursuant to approved forms, use of which are mandatory. See 25A *S.C. Code Ann. Reg. 67-203(A)*. To suggest, as the majority does, that composing forms and mandating their use is an improper alteration or addition to a statute, especially a statute specifically referring "an application for review," is untenable. Further, the regulation's provision that the fourteen-day period is jurisdictional simply implements the statutory language, and is proper. See *Chapman v. Foremost Dairies*, 249 S.C. 438, 154 S.E.2d 845 (1967).

I would affirm.

MOTION
EXHIBIT

#4

WORKERS' COMPENSATION

- | | | | | |
|---------|---|---------|--|--|
| 67-504. | Terminating Payment of Temporary Total or Temporary Partial Compensation During the First One Hundred Fifty Days After Employer's Notice of the Accident. | Reg. | 67-506. | Terminating Temporary Compensation after the First One Hundred Fifty Days after the Employer's Notice of the Injury. |
| 67-505. | Suspending Temporary Compensation after the First One Hundred Fifty Days after the Employer's Notice of the Injury. | 67-509. | Medical Treatment While Receiving Temporary Compensation Benefits. | |
| | | 67-510. | Unauthorized Suspension or Termination of Temporary Compensation Benefits. | |

67-502. Words and Phrases, Defined.

A. Day of incapacity: The day of the injury is the first day of incapacity unless the injured person receives full pay for the day. In that event, the first day of incapacity is the day following receipt of full pay from the employer.

B. Disability:

(1) Incapacity because of injury to earn wages which the employee was receiving at the time of injury in the same or any other employment.

(2) Disability is presumed to continue until the employee returns to work or compensation is otherwise suspended or terminated according to Section 42-9-260.

C. Fractional part of a week: For a fractional part of a week, the daily wage is one-seventh of the weekly wage.

D. Return to work without restriction: A statement of the authorized health care provider about the capacity of the claimant to meet the demands of a job and the conditions of employment. The determination must be made when the claimant's physical condition is static or is stabilized with or without medical treatment. The determination is appropriate when there are no physical limitations on the claimant's ability to perform the same or other suitable job as the claimant performed before the injury.

E. Temporary Partial Incapacity: Partial incapacity for work resulting from the injury.

F. Temporary Total Incapacity: Total incapacity for work resulting from the injury.

G. Waiting Period: The day or days lost because of inability to work on account of the injury are counted in the waiting period even though the days may not be consecutive.

HISTORY: Amended by State Register Volume 20, Issue No. 5, eff May 24, 1996; State Register Volume 21, Issue No. 4, eff April 25, 1997.

67-503. Payment of Temporary Total and Temporary Partial Compensation.

A. Medical, surgical, hospital, and other treatment including medical and surgical supplies are allowed from the first day of injury.

(1) Temporary total or temporary partial compensation is incurred on the eighth calendar day of incapacity and from the first day of incapacity if the injury results in incapacity for more than fourteen calendar days. The seven and fourteen day periods need not be consecutive days.

(2) Payment and acceptance of temporary compensation files a claim.

B. When the employer's representative begins to pay either temporary total or temporary partial compensation, or salary in lieu of temporary compensation, the employer's representative shall complete Section I of the Form 15, Temporary Compensation Report.

(1) The employer's representative shall file the Form 15 with the Claims Department within ten days of the date of first payment of compensation.

(2) The employer's representative shall serve the Form 15 on the Claimant according to R.67-211 with the claimant's first check.

C. When the compensation rate changes, the employer's representative shall complete, file, and serve, as set out above, a new Form 15.

(1) In an ongoing period of temporary partial compensation where the rate varies from week to week, the employer's representative shall report the first payment on the Form 15 as set out above.

(2) Supplemental payments shall be reported on the Form 15S, Supplemental Report of Compensation, to be filed with the document stopping that period of temporary partial compensation or with the Form 18, whichever becomes due first.

D. If the employer's representative does not pay temporary compensation, the claimant may request a hearing to receive benefits according to R.67-207. Payment of temporary total or temporary partial compensation does not prevent the claimant from seeking any other benefits available under the Act.

HISTORY: Amended by State Register Volume 19, Issue No. 5, eff May 26, 1995; State Register Volume 21, Issue No. 4, eff April 25, 1997.

Notes of Decisions

Maximum medical improvement 1

1. Maximum medical improvement

Claimant was not released to return to work without restrictions until the date on which orthopedic surgeon opined that claimant had reached maximum medical improvement (MMI) and concluded that claimant could return to work with the use

of good body mechanics and careful lifting techniques, and therefore employer was required to pay claimant temporary disability benefits from the day after his termination, which was a little more than 15 days after he returned to work with restrictions, until he achieved MMI and was authorized to return to work without restrictions. *Cranford v. Hutchinson Const. (S.C.App. 2012) 731 S.E.2d 303, 399 S.C. 65, rehearing denied. Workers' Compensation ⇨ 870.4*

67-504. Terminating Payment of Temporary Total or Temporary Partial Compensation During the First One Hundred Fifty Days After Employer's Notice of the Accident.

A. The employer's representative may terminate or suspend temporary compensation during the first one hundred fifty days after the employer received notice of the injury pursuant to Section 42-9-260. When compensation is terminated or suspended, the employer's representative shall complete Section I and Section II of the Form 15, Temporary Compensation Report. The employer's representative shall file the Form 15 immediately with the Claims Department and shall serve the Form 15 immediately on the claimant pursuant to R.67-211 with documentation attached as to the reason for termination or suspension.

B. To terminate or suspend compensation pursuant to Section 42-9-260(B)(2), the employer's representative must obtain a signed Form 17.

C. The claimant may request a hearing to dispute the termination or suspension of temporary compensation by completing Section III of the Form 15 and filing it according pursuant to R.67-207.

HISTORY: Amended by State Register Volume 16, Issue No. 4, eff April 24, 1992; State Register Volume 21, Issue No. 4, eff April 25, 1997; SCSR 42-2 Doc. No. 4735, eff February 23, 2018.

Notes of Decisions

In general 1
Maximum medical improvement 2

1. In general

Employer, which had been paying workers' compensation claimant temporary partial compensation, was required to pay temporary total compensation to claimant after terminating claimant's employment for sleeping while at work; employer had earlier voluntarily agreed that claimant was disabled and signed consent order requiring that it pay claimant disability compensation. Workers' Compensation Commission found that claimant did not refuse employment when she fell asleep and thus was not prohibited from receiving benefits, and employer refused to provide alternative employment. *Davis v. UniHealth Post Acute Care (S.C.App. 2013) 741 S.E.2d 770, 402 S.C. 541. Workers' Compensation ⇨ 880.20(5); Workers' Compensation ⇨ 880.25*

Even if employer could have stopped workers' compensation claimant's temporary total disability benefits after claimant was cleared by orthopedic surgeon to return to work without restrictions, employer failed to follow procedures for stopping benefits; employer did not file and serve Form 15 for at least 18 days after compensation was terminated, and employer failed to attach supporting documentation to form. *Martin v.*

Rapid Plumbing (S.C.App. 2006) 631 S.E.2d 547, 369 S.C. 278, rehearing denied. Workers' Compensation ⇨ 2016; Workers' Compensation ⇨ 2021

Stopping payment on temporary award.—This rule and Code 1962 § 72-352 contemplate that if the insurance carrier desires to stop further payments of compensation under a temporary award, application should be made to the commission for permission to do so and the employee should receive notice of the application. *Halks v Rust Engineering Co. (1946) 208 SC 39, 36 SE2d 852. Workers' Compensation ⇨ 2013*

2. Maximum medical improvement

Claimant was not released to return to work without restrictions until the date on which orthopedic surgeon opined that claimant had reached maximum medical improvement (MMI) and concluded that claimant could return to work with the use of good body mechanics and careful lifting techniques, and therefore employer was required to pay claimant temporary disability benefits from the day after his termination, which was a little more than 15 days after he returned to work with restrictions, until he achieved MMI and was authorized to return to work without restrictions. *Cranford v. Hutchinson Const. (S.C.App. 2012) 731 S.E.2d 303, 399 S.C. 65, rehearing denied. Workers' Compensation ⇨ 870.4*

67-505. Suspending Temporary Compensation after the First One Hundred Fifty Days after the Employer's Notice of the Injury.

A. After the one hundred fifty day period, the employer's representative shall not suspend or terminate temporary compensation except as provided in this regulation or R.67-506.

B. Disability is presumed to continue until the claimant returns or agrees he or she is able to return to work for fifteen calendar days.

C. Temporary compensation may be suspended as follows:

(1) When the authorized health care provider reports the claimant is able to return to work without restriction to the same or other suitable job, and such job is provided by the employer, the employer's representative may suspend temporary compensation while the claimant is working unless temporary partial compensation is due.

(2) When the authorized health care provider reports the claimant is able to return to work at limited duty and the employer provides limited duty work consistent with the terms upon which the claimant has been released, the employer's representative may suspend temporary compensation while the claimant is working unless temporary partial compensation is due.

(3) When the claimant returns to work for another employer, the employer's representative may suspend temporary compensation while the claimant is working, unless temporary partial compensation is due.

D. When the claimant is unable to complete fifteen calendar days of work, the employer's representative shall reinstate temporary compensation according to the terms of the Form 15 and may request a hearing to terminate compensation by filing a Form 21 according to R.67-506.

E. When the claimant completes fifteen calendar days of work, or fifteen days after the claimant agrees he or she could have returned to work, the employer's representative immediately shall submit a completed Form 17 to the claimant for signature.

(1) The employer's representative shall file the Form 17 signed by the claimant and the employer's representative with the Claims Department within thirty-one days of the date the claimant returned to work or agreed he or she was able to return to work.

(2) Temporary compensation is terminated by the filing of the signed Form 17.

(3) A signed Form 17 does not prevent the claimant from seeking any other benefits available under the Act.

(4) When the claimant returns to work for at least fifteen calendar days but refuses to sign a Form 17, the employer's representative shall file a Form 21 according to R.67-506. The Commission may certify the Form 17 at an informal conference.

F. When the employer's representative suspends temporary compensation for refusal of medical treatment according to Section 42-15-60 or Section 42-15-80, the employer's representative shall file a Form 21 according to R.67-506.

G. If the employer's representative reinstates temporary compensation after the fifteen day period above, the employer's representative shall file a new Form 15 according to R.67-503.

H. If the employer's representative refuses to reinstate temporary compensation after the fifteen day period above, the claimant may request a hearing according to R.67-207.

HISTORY: Amended by State Register Volume 21, Issue No. 4, eff April 25, 1997.

Notes of Decisions

In general

1. In general

Employer was permitted under workers' compensation statute to terminate temporary benefits for any cause, including fraud, after expiration of 150 days from first report of claimant's injury, so long as Workers' Compensation Commission approved termination of benefits in an evidentiary hearing, even though regulations governing suspension and termination of benefits after 150 days and request-for-hearing form did not list employee fraud as possible ground for termination

of benefits. *Fredrick v. Wellman, Inc.* (S.C.App. 2009) 682 S.E.2d 516, 385 S.C. 8, rehearing denied, certiorari denied. *Workers' Compensation* ¶ 2003

The Workmen's Compensation Act and rule of the Industrial Commission contemplate that if insurance carrier desires to stop further payment of compensation under a temporary award, application should be made to the commission for permission to do so, whereupon if there is a disagreement as to right to discontinue, matter will be placed on the calendar for hearing after which if it is determined that carrier is entitled to discontinue payments of total temporary disability, the question of permanent disability or disfigurement is ripe for deter-

mination. *Halks v. Rust Engineering Co.* (S.C. 1946) 208 S.C. 39, 36 S.E.2d 852. *Workers' Compensation* ⇨ 2013

67-506. Terminating Temporary Compensation after the First One Hundred Fifty Days after the Employer's Notice of the Injury.

A. After the one hundred fifty day period, the employer's representative shall not suspend or terminate temporary compensation except as provided in this regulation or in R.67-505. Disability is presumed to continue until the employee returns to work, except as provided herein.

B. After the one hundred fifty day period, when the claimant is receiving temporary compensation and the authorized health care provider reports the claimant has reached maximum medical improvement, the employer's representative shall continue payment of temporary compensation until the Commission finds the employer's representative may terminate compensation unless compensation has been suspended according to R.67-505. When compensation has been suspended according to R.67-505, see section F below.

C. After the one hundred fifty day period, when the claimant is receiving temporary compensation and the authorized health care provider reports the claimant may return to work at the same or other suitable job and such job has been offered by the employer but the claimant refuses to return to work, the employer's representative must continue payment of temporary compensation until the Commission finds the employer's representative may terminate temporary compensation.

D. After the one hundred fifty day period, when the claimant is receiving temporary compensation and the authorized health care provider assigns an impairment rating and reports the claimant is unable to return to work at the same or other suitable job, the employer's representative must continue payment of temporary compensation until the Commission finds the employer's representative may terminate temporary compensation.

E. To request a hearing for permission to terminate temporary compensation, the employer's representative shall file a Form 21 with the Judicial Department.

(1) The employer's representative shall serve a copy of the Form 21 on the claimant according to R.67-211.

(2) The employer's representative shall certify temporary compensation is current or no hearing will be set.

F. After the one hundred fifty day period, when the employer's representative has suspended temporary compensation according to R.67-505, the employer's representative shall request permission to terminate compensation by filing a Form 21 with the Judicial Department.

(1) Serve a copy of the Form 21 on the claimant according to R.67-211.

(2) The Commission may schedule an informal conference to certify a Form 17 when compensation has been suspended according to R.67-505.

HISTORY: Amended by State Register Volume 21, Issue No. 4, eff April 25, 1997.

Notes of Decisions

In general

1. In general

Substantial evidence existed to support Worker' Compensation Commission's Appellate Panel's finding that claimant had reached maximum medical improvement (MMI) from her right hand and forearm injury as of the date her treating orthopedist referred claimant to a hand specialist for an independent medical examination; claimant's treating orthopedist specifically stated that claimant had reached MMI prior to the date selected by the Appeals Board, and other doctors placed claimant at MMI around the same time as her treating orthopedist. *Hamilton v. Martin Color-Fi, Inc.* (S.C.App. 2013) 748 S.E.2d 76, 405 S.C. 478, rehearing denied. *Workers' Compensation* ⇨ 1627.14

Employer, which had been paying workers' compensation claimant temporary partial compensation, was required to pay temporary total compensation to claimant after terminating claimant's employment for sleeping while at work; employer had earlier voluntarily agreed that claimant was disabled and

signed consent order requiring that it pay claimant disability compensation, *Workers' Compensation Commission* found that claimant did not refuse employment when she fell asleep and thus was not prohibited from receiving benefits, and employer refused to provide alternative employment. *Davis v. UniHealth Post Acute Care* (S.C.App. 2013) 741 S.E.2d 770, 402 S.C. 541. *Workers' Compensation* ⇨ 880.20(5); *Workers' Compensation* ⇨ 880.25

Employer was permitted under workers' compensation statute to terminate temporary benefits for any cause, including fraud, after expiration of 150 days from first report of claimant's injury, so long as *Workers' Compensation Commission* approved termination of benefits in an evidentiary hearing, even though regulations governing suspension and termination of benefits after 150 days and request-for-hearing form did not list employee fraud as possible ground for termination of benefits. *Fredrick v. Wellman, Inc.* (S.C.App. 2009) 682 S.E.2d 516, 385 S.C. 8, rehearing denied, certiorari denied. *Workers' Compensation* ⇨ 2003

An injured worker was entitled to workers' compensation benefits for his work-related injury where he was injured in an

MOTION
EXHIBIT

#5

State of South Carolina

1333 Main St, Suite 500
P.O. Box 1715
Columbia, S.C. 29202-1715



Tel: (803) 737-5700
Fax: (803) 737-1281
www.wcc.sc.gov

Workers' Compensation Commission

August 4, 2020

Mr. Terry Capone
130 Summerlea Drive
COLUMBIA, SC 29203

The enclosed are being returned for the following reason(s):

We are in receipt of Claimant's Form 15, Sec. III, Request for Hearing to dispute the termination or suspension of temporary compensation pursuant to Reg. 67-504(C).

Since the merits of this particular case are pending at the Court of Appeals, the Commission does not have jurisdiction to consider these pleadings at this time. These pleadings, along with the associated checks, are being returned to you at this time and may be re-filed, if necessary, following remittitur from the Court of Appeals.

Enclosure and check #1485 & #1483

Sincerely,

WCC Judicial Dept.

TERRY H. CAPONE
4209 WOODBRIDGE DR.
COLUMBIA, SC 29203

67-7873/2539
05

1485

130 Summerlea

DATE

7/22/2020

Security features included. Details on back.

Pay to the order of

SC WCC

\$ 50.00



STATE CREDIT UNION
SERVING SOUTH CAROLINA'S WORKFORCE
COLUMBIA, SOUTH CAROLINA 29202

Notice Temporary Comp #1319203
HAS been stopped
WCC Form #15-11 Never filled
Additional Compensation
118 RATE

⑆ 253978730⑆ 20009632789 8⑈ 1485

TERRY H. CAPONE
4209 WOODBRIDGE DR.
COLUMBIA, SC 29203

67-7873/2539
05

1483

130 Summerlea Ave

DATE

7/22/20

Security features included. Details on back.

Pay to the order of

SC WCC

\$ 50.00



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⑆ 253978730⑆ 20009632789 8⑈ 1483

Carolina Workers' Compensation Commission

1333 MAIN STREET, SUITE 500
P.O. Box 1715
COLUMBIA, SOUTH CAROLINA 29202-1715

N SERVICE REQUESTED

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08/05/2020
US POSTAGE \$000.65
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ZIP 29201
041M114672

CAJ9EMP 29203



South Carolina Workers' Compensation Commission

1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
(803) 737-5723



WCC File #: 1319203
Carrier File #:
Carrier Code #:
Employer FEIN #:

Claimant's Name: TERRY H CAPONE
Address: 130 SUMMERLEA DRIVE
City: COLUMBIA State: SC Zip: 29203
Home Phone: 803 622 6578 Work Phone:
Preparer's Name: TERRY H CAPONE Law Firm: N/A
Employer's Name: CITY OF COLUMBIA
Address: PO BOX 667
City: COLUMBIA State: SC Zip: 29217
Insurance Carrier: SELF/COMPANION TPA (803)737-4242
Preparer's Phone #: 803 622 6578

Date of injury: 10/12/2013 (m/d/yyyy) Date of Notice to Employer of Injury: 10/25/2013 (m/d/yyyy)

- I. Payment of Temporary Compensation Check one: [] Initial period [x] Additional period [] Corrected compensation rate
A. Temporary Total at the compensation rate of \$2,611.20 per week. For this period of disability, disability began on 10/21/2013 (m/d/yyyy) and the date of first payment was (m/d/yyyy).
B. Temporary Partial at the compensation rate of per week. Note: When the Temporary Partial compensation rate will vary, report the first payment here. Supplement this report throughout the period of Temporary Partial compensation by filing a Form 15S with the Form 18, which shall be filed six months after the date of injury and each six months thereafter until the file is closed. For this period of disability, disability began on (m/d/yyyy), and the date of first payment was (m/d/yyyy).

Calculation of Temporary Partial Rate:

Average weekly wage before injury

Table with 2 columns: Calculation step and Amount. Rows include Current weekly wage, Difference in wages before injury and now (\$0.00), x .6667, and Temporary Partial Compensation Rate (\$0.00).

- [] C. Salary in lieu of Temporary [] Total [] Partial (choose one) compensation in the amount of \$ per week. For this period of disability, disability began on (m/d/yyyy) and the date of first payment of salary in lieu of temporary compensation was (m/d/yyyy).

THIS SECTION MAY BE USED ONLY WITHIN 150 DAYS AFTER NOTICE TO EMPLOYER OF INJURY. ATTACH DOCUMENTATION AS TO THE REASON OF THE TERMINATION.

II. Termination of Temporary Compensation Temporary compensation payments were stopped on (m/d/yyyy) for the following reason:

- [] Claimant has returned to work at least 15 days and no temporary partial compensation is due.
[] Claimant agrees he/she is able to return to work and has signed a Form 17.
[] Based on a good faith investigation, the claim is denied. Reason for denial:
[] Claimant has been released to return to work without restrictions and employment has been offered.
[] Claimant has been released to work at limited duty and employer has provided limited duty work consistent with the terms upon which the Employee has been released.
[] Claimant has refused medical treatment, examination, or evaluation. Note: Benefits must be resumed if claimant accepts the treatment, examination, or evaluation. Additional report must be filed if compensation is resumed.

I certify that this form has been served on the claimant per R.67-211.

Signature of Claims Administrator

Date (m/d/yyyy)

III. Notice to Injured Worker or Legal Representative when Temporary Compensation Has Been Stopped:

The employer's representative may stop temporary compensation within 150 days of the date of notice of injury for the above reasons. However, if you believe that the temporary compensation should not have been stopped, you may request a hearing by signing below and returning this form to SCWCC Judicial Department at the address at the top of this form. A hearing will be held within 60 days of receipt of your request to determine if temporary compensation has been properly terminated.

MY SIGNATURE BELOW INDICATES THAT I DO NOT AGREE WITH THE TERMINATION OF TEMPORARY COMPENSATION. I REQUEST A HEARING TO DETERMINE WHETHER I AM ENTITLED TO FURTHER TEMPORARY COMPENSATION PAYMENTS.

Check one: Form 15(II) [] Has [x] Has not been received.

Signature of Claimant or Legal Representative

7/22/2020

Date (m/d/yyyy)

Employer's representative must complete and file Form 15 with Claims Department within ten days after compensation begins or is terminated. Employer's representative must serve the Form 15 on the claimant when compensation begins per R.67-211. Employer's representative must prepare and serve Form 20 within thirty days of beginning compensation per R.67-1603. Employer's representative must serve per R.67-211 two copies of the Form 15 on claimant immediately on termination of compensation with documentation attached as to the reason for the termination. Injured worker may contest termination of compensation by completing section III of the Form 15 and filing it with Judicial Department.

South Carolina Workers' Compensation Commission

1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
(803) 737-5723



WCC File #: 1319203

Carrier File #:

Carrier Code #:

Employer FEIN #:

Claimant's Name: TERRY H CAPONE

Employer's Name: CITY OF COLUMBIA

Address: 130 SUMMERLEA DRIVE

Address: PO BOX 667

City: COLUMBIA State: SC Zip: 29203

City: COLUMBIA State: SC Zip: 29217

Home Phone: 803 622 6578 Work Phone:

Insurance Carrier: SELF/COMPANION TPA (803)737-4242

Preparer's Name: TERRY H CAPONE Law Firm: N/A

Preparer's Phone #: 803 622 6578

Date of injury: 10/12/2013 (m/d/yyyy)

Date of Notice to Employer of Injury: 10/25/2013 (m/d/yyyy)

I. Payment of Temporary Compensation Check one: [] Initial period [] Additional period [x] Corrected compensation rate (choose A, B, or C)

- A. Temporary Total at the compensation rate of \$2,611.20 per week. For this period of disability, disability began on 10/21/2013 (m/d/yyyy) and the date of first payment was (m/d/yyyy).
B. Temporary Partial at the compensation rate of per week. Note: When the Temporary Partial compensation rate will vary, report the first payment here. Supplement this report throughout the period of Temporary Partial compensation by filing a Form 15S with the Form 18, which shall be filed six months after the date of injury and each six months thereafter until the file is closed. For this period of disability, disability began on (m/d/yyyy), and the date of first payment was (m/d/yyyy).

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Average weekly wage before injury

Table with 2 columns: Calculation, Amount. Rows: Current weekly wage, Difference in wages before injury and now (\$0.00), x .6667, Temporary Partial Compensation Rate (\$0.00)

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[] Claimant has been released to work at limited duty and employer has provided limited duty work consistent with the terms upon which the Employee has been released.
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I certify that this form has been served on the claimant per R.67-211.

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Date (m/d/yyyy)

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7/22/2020

Date (m/d/yyyy)

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RETIRED

July 29, 2020

US Certified Mail Delivery #7019 2970 0000 7933 4342
South Carolina Workers' Compensation Commission
Judicial Department
PO Box 1715
Columbia, SC 29202

Re: (2) Form 15-Temporary Compensation Report-Additional Compensation and Compensation Rate

SWORN DECLARATION

STATE OF SOUTH CAROLINA §

COUNTY OF RICHLAND §

Pursuant to 28 U.S.C. 1746, I Terry H Capone, declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief:

I did not request to cancel my submittal of the SC WCC Form #15. I am returning the (2) SC WCC form#15's and (2) checks #1485 \$50.00 and #1483 \$50.00 for processing.

I was never informed by the South Carolina Workers' Compensation Commission of the process or procedure my employer/carrier needed to follow before stopping compensation, and was due to Fraud On The Court/Tribunal and a denial of procedural due process and equal protection under the color of law; No time limit.

I am under disability under the law, no rights are lost and I am not a lawyer. Thank you for your assistance in this matter, please contact me if you have any questions.

SIGNATURE PAGE BELOW

Executed on this date July 29, 2020



RETIRED

July 24, 2020 PM

EMAIL DELIVERY

South Carolina Workers' Compensation Commission
Director Cannon and Records Manager
1333 Main Street Suite 500
P.O. Box 1715
Columbia, South Carolina 29202-1715

Re: Cancellation: Motion For Reconsideration Fraud On The Court/Tribunal –Denial of Due process and Equal Protections Under the Color of Law
Terry Capone v. City of Columbia SC WCC File Case No.:1319203, 1322451, 1420487

Dear SC WCC Judicial Dept:

Please Cancel Motion for Reconsideration and I have abandoned my Motion to Stay and Remand with South Carolina Court of Appeals.

I am not a lawyer. Based on new developments/ evidence a remand is necessary for reconsideration accept this as a motion. Thank you for your assistance with this matter, please contact me if you have any questions. Please consider the attached evidence.

With The Highest Regards,

Enclosure(s) None
Cc: Cynthina C Dooley
Carmelo B. Sammataro Attorney for Respondents

Mr. Terry H. Capone
Fire Battalion Chief-Retired
130 Summerlea Drive
Columbia, SC 29203
803.622.6578
Email: tcapone@liberty.edu

Signed:



Terry H Capone

3 pages attached WCC FORM #15 Temporary Compensation Report

Mr. Terry H. Capone
Fire Battalion Chief-Retired
130 Summerlea Drive
Columbia, SC 29203
803.622.6578
Email: tcapone@liberty.edu

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

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

RECEIVED
Sep 24 2020
SC Court of Appeals

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

PROOF OF SERVICE

Terry H Capone, Claimant,

Appellant,

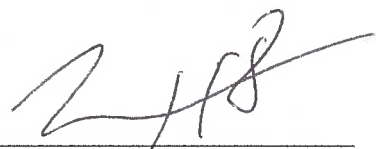
v.

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

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

I certify this 24th day of September 2020, that I have served a copy of the Motion Requesting Permission to File An Amended Designation of Matter 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

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

September 24, 2020



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

September 22, 2020

Terry Capone
130 Summerlea Drive
Columbia SC 29203

Re: Terry Capone v. City of Columbia (2)
Appellate Case No. 2019-000369

Dear Mr. Capone:

Upon reviewing your amended designation of matter, the following deficiency has been noted under the South Carolina Appellate Court Rules (SCACR), and any deficiency must be corrected within ten (10) days of the date of this letter or your amended designation of matter will not be considered by this Court:

- A motion must be filed requesting permission to file an amended designation of matter.

Very truly yours,

V. Claire Allen

CLERK

cc: Cynthia C. Dooley, Esquire
Carmelo Barone Sammataro, Esquire



September 24, 2020

VIA US MAIL OR HAND DELIVERY

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

RECEIVED

Sep 24 2020

SC Court of Appeals

Re: Response to SC COA Deficiency letter dated September 22, 2020 Terry Capone, Appellant, v. City of Columbia, Employer, and Companion Third Party Administrator, LLC, Carrier, Respondent Case No. 2019-000369

The Honorable Jenny Abbott Kitching, Clerk:

Please be advised that in response to your September 22, 2020 Deficiency Letter, in regards to the "amended designation of matter" not being considered by the court, it was this courts error that caused the deficiency. When I first submitted my designation of matter, it was this court that stated I could not submit the evidence submitted to the agency and that was in error. When a plaintiff/appellate brings a appeal from the SC Workers Compensation Commission, he/she brings it under the Administrative Procedure Act (APA) whether expressly stated or not. I disagree with your request, but I have enclosed the motion with \$50.00 Check #1492 to comply with the courts request, although I believe this request by court is a clear and continued error and violation of my constitutional right to due process to defend this Void Decision/ Judgment produced by Fraud on the Court and other violations of law by the Sc Workers Compensation Commission and Respondents in the above referenced matters affecting substantial rights.

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

With Regards,

Enclosure: Motion to Amend designation of Matter due to error of the court

Mr. Terry H. Capone
Fire Battalion Chief-Retired
130 Summerlea Drive
Columbia, SC 29203
(803) 622-6578
Email: tcapone@liberty.edu