

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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Oct 08 2020

SC 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

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

v.

City of Columbia, Employer, and

Companion Third Party Administrator, LLC, Carrier,Respondents.

**APPELLANTS REPLY IN OPPOSITION TO RESPONDENTS OPPOSITION OF
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.**

AND

**MOTION FOR SUMMARY JUDGEMENT UNDER THE APA FOR FRAUD UPON THE
COURT, DENIAL OF DUE PROCESS, PROCEDURAL AND SUBSTANTIVEDUE
PROCESS AND EQUAL PROTECTION UNDER THE COLOR OF LAW AND OTHER
VIOLATIONS OF LAW**

COMES NOW Appellant, Terry H Capone Under the Administrative Procedure Act,
hereby Replies In Opposition to Respondents Opposition of Appellants Notice of Motion to
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 AND Further moves the court by Notice of Motion For
Summary Judgment Under the APA For Fraud Upon the Court, Denial of Due Process,

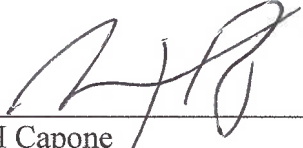
Procedural and Substantive Due process and Equal Protection under the color of law and Other Violations of Law.

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: October 8, 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 *Rep. Husb. & 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. **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.**

The Due Process Clause of the Fourteenth Amendment provides "nor shall any State deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1. The Supreme Court's interpretation of this clause explicates that the amendment provides two different kinds of constitutional protection: procedural due process and substantive due process. *Cf. Zinermon v. Burch*, 494 U.S. 113, 125, 110 S. Ct. 975, 983, 108 L. Ed. 2d 100 (1990).

The substantive component of the Due Process Clause protects those rights that are "fundamental," that is, rights that are "implicit in the concept of ordered liberty," *Palko v. Connecticut*, 302 U.S. 319, 325, 58 S. Ct. 149, 152, 82 L. Ed. 288 (1937). [] The Supreme Court has deemed that most--but not all--of the rights enumerated in the Bill of Rights are fundamental; certain unenumerated rights (for instance, the penumbral right of privacy, *see Planned Parenthood v. Casey*, 505 U.S. 833, ----, 112 S. Ct. 2791, 2807, 120 L. Ed. 2d 674 (1992)) also merit protection. It is in this framework that fundamental rights are incorporated against the states. [] A finding that a right merits substantive due process protection means that the right is protected "against 'certain government actions regardless of the fairness of the procedures used to implement them.'" *Collins v. City of Harker Heights*, 503 U.S. 115, ----, 112 S. Ct. 1061, 1068, 117 L. Ed. 2d 261 (1992) (*quoting Daniels v. Williams*, 474 U.S. 327, 331, 106 S. Ct. 662, 665, 88 L. Ed. 2d 662 (1986))

The processes offered by the state are inadequate remedies in regards to violation of my federal rights. As a disabled Firefighter in the line of duty My South Carolina Workers Compensation Benefits are a fundamental Right and any benefits as a disabled fire fighter or disabled Veteran under the South Carolina Constitution.

**III. CONCLUSION
PRAYER AND RELIEF REQUEST**

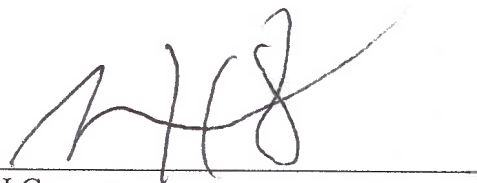
For the forgoing reasons, due to the “extraordinary circumstances” and actual facts Appellants Notice of Motion Requesting Permission From The Court To Accept The Amended Designation of Matter Filed With This Court September 14, 2020, Should be //Granted//, Due to the Decision/ Judgments in this Matter 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 AND Grant Motion for Summary Judgment Under the APA for Fraud Upon the Court Denial of Due process, Procedural Due process, Substantive Due Process and Equal protection under the color of Law .

Executed on this date October 8, 2020

Dated: October 8, 2020

Enclosures Exhibits All on file with court in this matter.

By: _____



Mr. Terry H Capone
Fire Battalion Chief-Retired
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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
Oct 08 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 8TH day of October 2020, that I have served a copy of the Motion for Summary Judgment Under the APA for Fraud Upon the Court, Due process, Procedural and Substantive Due process and other violations of law 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

October 8, 2020

By: 
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APPELLANT, PRO PER



October 8, 2020

RECEIVED

Oct 08 2020

SC Court of Appeals

US MAIL DELIVERY OR PERSONAL SERVICE

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

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 (1) check# 1493 the amount of \$50.00 for (1) Motions:

1. The Appellant's Reply to Respondents opposition to Notice of Motion to Complete or Supplement the Administrative or Both and Consider Extra-Record Evidence-Due To Fraud On The Court And Other Violations of Law and
2. Appellant's Motion For Summary Judgment.

Notice to the Court, I am disabled, I have been taking my Aunt Debra (my deceased fathers only sister) who is stage 4 cancer to appointments South Carolina Oncology Association. I am not interested in having to respond to the Respondents or their attorneys who have been hired to deprive me of my South Carolina Workers Compensation benefits. The Court has all the evidence it needs, the decision is Void and God is not going to allow anyone to get away with defrauding or steal anything from me or my family. Miscarriages of justice will be corrected; it is written. I have also had enough of listening to Cynthia and Carmelo who stole from me and act like I am burdening the Court by seeking justice and they represent the respondents who stole/defrauded me. Why do I have to keep fighting the lie and fraud, I want it to end now.

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: Cynthia C Dooley
Attorney for Respondents

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Email: tcapone@liberty.edu