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Mar 25 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
APPELLATE PANEL

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

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

v.

City of Columbia, Employer, and

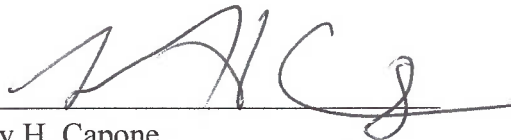
Companion Third Party Administrator, LLC, Carrier,Respondents.

APPELLANTS' PETITION/MOTION TO REINSTATE APPEAL

The Appellant pro se Terry H Capone, Employee ("Appellant") Petitions/Motions the South Carolina Court of Appeals to Reinstate his appeal due to the Exclusive Remedy Doctrine, Being Under disability, Unclean Hands, lack of Jurisdiction, Void Judgment, Violations of Constitutional Protections To Include Procedural and Substantive Due Process, Fraud On the Court, Crime Fraud Exception, "Active Concealment For Fraud In Real Property" 15-3-670 (C) (1)(2) and Other Actionable Violations of Law already brought to the attention of the Court of Appeals In Appellants Return To Motion to Dismiss dated May 13, 2019, continuing to show the Order and Decision is Void. This Petition/Motion is Timely.

The grounds for the Appellants' Petition/Motion To Reinstate Appeal are addressed in more detail In the supporting memorandum filed herewith **Exhibits# 1-12** and incorporated herein.

Respectfully Submitted,

By: 

Mr. Terry H. Capone
Fire Battalion Chief-Retired
1 Arsenal Hill Court
Columbia, South Carolina 29201
Email: tcapone@liberty.edu
(803) 622- 6578

Richland, South Carolina
March 25, 2021

Eosure(s) as stated
Cc: Cythia Dooley, Carmelo Sammataro
Attorney's for Respondents

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**APPELLANTS' MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF PETITION/MOTION TO REINSTATE APPEAL**

This court can not dispute the fact; I am under disability under the law, by Federal and South Carolina State agencies due to disabilities incurred as a result of work. I have a protected property interest in the State of South Carolina as a Disabled Fire fighter , U.S. Marine Veteran, and in South Carolina Workers' Compensation benefits.

The Supreme Court stated in *Abbot Laboratories v. Gardner*, 387 U.S.136, 87 S. Ct. 1507, 18L. 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.

The December 2, 2015 Order/Decision of Gene McCaskill is VOID, the Appellate never received a fair hearing due to him, denied Procedural and Substantive Due Process, Equal Protection under the Color of law, and other violations of law, he has a Constitutional protected property interest in South Carolina Workers’ Compensation Benefits, this Court’s **Order is Void** and was in error and the **Void Order** dismissing the appeal should be vacated or reversed on rehearing, but Void even before being vacated and reversed on rehearing, as the courts March 12, 2021 Order being Void, Void. **See, Exhibit 1-12** attached herewith, incorporated herein.

When appeal is taken from a void judgment, the **appellate court** must declare the judgment void, **because the appellate court may not address the merits**, it must set aside the trial court’s judgment and dismiss the appeal. A void judgment may be attacked at any time by a person whose rights are affected. See *El-Kareh v. Texas Alcoholic Beverage Comm’n*, 874 S.W.2nd 192, 194 (Tex.App-Houston [14th Dist.] 1994, no writ) no writ); see also *Evans v. C. Woods, Inc.*, No. 12-99-00153-CV, 1999 WL 787399, at * 1(Tex. App-Tyler Aug 30,1999, no pet.h.)

A Party Affected by a 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.2nd 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.**

The Court the South Carolina Workers Compensation Commission is a final order abridging Constitutional Rights, to include *Fundamental Rights*; and the court is well aware those rights include the fundamental and substantial rights to Appeal/ Petition, and in which “Extraordinary Circumstances Exist”. The denial of the disabled pro se Appellant/ Claimant Appeal/ Petition

is a Denial of due process, Procedural Due process and Substantive Due Process and Equal Protection under the Color of law of the Constitution 5th & 14 Amendments, as those applicable to the State. The South Carolina Court of Appeals and the South Carolina Workers' Compensation Commissions actions of the Respondents and their attorneys constitutes an unlawful taking.

**SWORN DECLARATION OF TERRY H. CAPONE
IN SUPPORT OF PETITION/MOTION TO REINSTATE APPEAL**

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:

1. Respondents previously filed a motion to dismiss the Appellants appeal as untimely, after careful consideration, this Court denied the motion, and was filed June 27, 2019

See, 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 ask why did the Court not decide the decision/ order being appealed is Void instead of dismissing my appeal?

3. This Court's Order filed Mar 12, 2021, which this court denied the motion requesting to Stay Proceedings Pending Investigation (into my discarded court served documents), Review and Clarification on (2) records on appeal, what was the court requesting in the record of appeal and the Respondents never provided, produce or delivered a record on appeal to me or the Court either; so why am I being held to a higher standard .

4. I have made every effort to comply with the Court Orders. This Court process is an extremely confusing, difficult and I did not know what the record on appeal was or specifically what it included, that's why I paid for the Motion to hold in abeyance, to get an understanding. I thought the thousands of pages I delivered to the Court was the records on appeal, since nobody from the Court advised anything different at the time.

5. As this Court is aware, I am struggling with multiple disabling occupational/ work related disabling health issues, the effects thereof and the mediations to treat this disabilities make it impossible to keep up, I am not a lawyer.

6. In addition, the flash drive I used most of the time with my files erased my files when I removed it from the printer.

7. On March 1, 2021, my lap top computer that I have my court documents electrical cord was pinched by a hinge cover and broke the wire causing a short circuit and after ordering the a new cord and receiving it one March 5, 2021, and installing it in the computer the Lap Top Power jack then went out. **See, Exhibit 2**

8. On March 5, 2021 I ordered the power jack and did not receive it until March 20, 2021, to find the electrical short had now made the computer inoperable. I was given an adapter for the Lap tops hard drive, to give me access to my file, so I have access to the files now. **See, Exhibit 2**

9. 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.

10. 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, Exhibit # 3.**

11. This Petition/ Appeal fits squarely into the case of Cit of Columbia Fire Captain James "Woody" Goodman case: The petitioner substantially complied with § 42-17-50 where he wrote the Workers' Compensation Commission a timely letter expressing his desire to appeal. Goodman v. City of Columbia 318 S.C. 488 (S.C. 1995) 458 S.E.2d 531.
See, Exhibit #3.

12. 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 **See, Exhibit #4**

13. 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 **See, Exhibit #4**

14. 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, Exhibits #4**

15. Department of Veterans Affairs determined Appellant Terry Capone became totally and permanently a disabled Veteran due to service connected disabilities in 2019 and back dated effective date to: **February 03, 2014. See, Exhibit #6**

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.

In support of this Petition/ Motion To Reinstate a Meritorious Appeal and the Respondents have "Unclean Hands", have committed Fraud on the Tribunal/ Court and are not prejudiced by this request or by my inability to keep up with the pace, because when I paid for and requested through Motion a more flexible schedule and the Court to assist me in obtaining Counsel the Court denied these request and the Respondents opposed the request; I did not need the court to pay for the Counsel, I just needed the Court to mandate it, so I could get assistance with staying

on track with the Courts request. I have asked the Court for assistance and through motions on several occasions to no avail.

I. EXCLUSIVE REMEDY DOCTRINE

The Supreme Court stated in *Abbot Laboratories v. Gardner*, 387 U.S.136, 87 S. Ct. 1507, 18L. 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.

Under the “exclusivity rule,” workers’ compensation is the exclusive remedy for personal injury to an employee arising out of and in the course of employment. S.C. Code Ann. § 42-1-540 (1985); *Poch v. Bayshore Concrete Prod./S.C., Inc.*, 405 S.C. 359, 747 S.E.2d 757 (2013); F. PATRICK HUBBARD & ROBERT L. FELIX, *SOUTH CAROLINA LAW OF TORTS* 212 (3d ed. 1990).

The very purpose of the Act is to assure the employee of redress for his injuries, if the facts show that he is entitled thereto, and to relieve him of the uncertainties of a trial in suit for damages. *Riddle v. Fairforest Finishing Co.* (S.C. 1942) 198 S.C.419, 18 S.E.2d 341

The purpose of the section {Code 1962 § 72-11} is to make the “owner”, the person who is interested in having the work done, liable to the employee so injured. *Marchbanks v. Duke Power Co.* (S.C.1939) 190 S.C.336, 2 S.E.2d 444.

Any doubts as to a worker’s status should be resolved in favor of including him or her under the Workers’ Compensation Act. *Poch v. Bayshore Concrete Products/South Carolina, Inc.* (S.C. 2013) 405 S.C. 359, 747 S.E.2d 757.

Workers’ Compensation 51 Workers’ Compensation Act should be construed in favor of coverage, and any reasonable doubts as to construction of the Act should be resolved in favor of the claimant. *Hall v. Desert Aire, Inc* (S.C.App 2007) 376 S.C.338, 656 S.E.2d 753, rehearing denied. Workers Compensation 52

The court is committed to a liberal construction of the Compensation Act to include injured workmen within its protection rather than exclude them. *Cagle v Clinton Cotton Mills* (1949) 216 SC 93, 56 SE2d 747. *Bailey v Santee River Hardwood Co.* (1944) 205 SC 433, 32 SE2d 365.

The Statute is to be construed liberally for the protection of the injured employee-to promote the purpose of its enactment. *Murdaugh v Robert Lee Const. Co.*(1937) 185 SC 497, 194 SE 447. *Ham v Mullins Lbr. Co.* (1940) 193 SC 66, 7 SE2d 712. *Cokely v Robert Lee, Inc.* (1941) 197 SC 157, 14 SE2d 889. *Pate v Plymouth Mfg. Co.* (1941) 198 SC 159, 17 SE2d 146.

The Workers' Compensation Act has to be construed liberally in favor of coverage, and doubtful cases should be resolved in favor of the injured employee. *Douglas v. Spartan Mills, Startex division* (S.C. 1965) 245 S.C. 265, 140 S.E.2d 173.

II. BEING UNDER DISABILITY /UN SOUND MIND /OTHER LEGAL DISABILITY UNDER THE LAW, AS THESE ARE MATTERS IN EQUITY

Equitable Tolling of Statute of Limitations:

“[E]quitable tolling, ‘[a]s the name suggests...is an equitable issue for court resolution.’” (Hopkins, supra, 225 Cal.App.4th at p. 745.)

The equitable tolling of statutes of limitations is a judicially created, nonstatutory doctrine. It is ‘designed to prevent unjust and technical forfeitures of the right to a trial on the merits when the purpose of the statute of limitations--- timely notice to defendant of plaintiff claims---has been satisfied.’ Where applicable, the doctrine will ‘suspend or extend statute of limitations as necessary to ensure fundamental practicality and fairness.’ ”(*McDonald v. Antelope Valley Community College Dist.* (2008) 45 Cal.4th 88, 99 [84 Cal.Rptr.3d 734, 194 P.3d 1026], internal citations omitted.)

“The equitable power of a court is not bound by cast-iron rules but exists to do fairness and is flexible and adaptable to particular exigencies so that relief will be granted when, in view of all the circumstances, to deny it would permit one party to suffer a gross wrong at the hands of the other.” *Hausman v. Hausman*, 199 S.W.3d 38, 42 (Tex. App. 2006). Equitable tolling may be applied where it is justified under all the circumstances.

UNDER DISABILITY/ UNSOUND MIND

The statute of limitations in this aforementioned matter should be equitably tolled, due to Appellant/Petitioner under disability/ unsound mind and under legal disability under the law, and has a protected right to be heard.

It is a fundamental doctrine of law that a party to be affected by a personal judgment must have his day in court, and an opportunity to be heard. Renauld v. Abbott, 116 US 277, 29 L Ed 629, 6 S ct 1194.

During the proceedings of August 21, 2015, and after any statute of limitations should be tolled I was and remain disabled, unsound mind due to mental illness and Neurocognitive Disorder due to Traumatic Brain Injury under disability, as a Firefighter which is permanently and totally disabled as a result of firefighting service related disabilities in the Columbia (RICHLAND) State of South Carolina, by State agencies as well as federal agencies:

Social Security Administration Office of Adjudication and Review effective date of disability: 10/21/2013 See, Exhibit #5

Fully favorable Decision- Highlights:

“3. The claimant has the following severe impairments: irritable bowel syndrome, and mental impairments variously diagnosed as post-traumatic stress disorder, depression, and anxiety (20 CFR 404.1520(b) and 404.1571 et seq.)”

“Claimants impairments are considered severe because, they are medically determinable impairments that, when considered either individually or in unison, significantly limit the claimant’s mental and physical abilities to do one or more basic work activities. In addition the claimants impairments have lasted at a “severe” level for continuous period of more than 12 months. In particular, the claimant’s irritable bowel syndrome, and mental impairments variously diagnosed as post-traumatic stress disorder, depression, and anxiety are severe impairments.”

“11. The claimant has been under disability as defined in the Social Security Act since October 21, 2013, the alleged onset date of disability (20 CFR 404.1520(g)).”

Department of Veterans Affairs Combined Disability rating is 90% Total and Permanently disabled and Unemployable effective 2/3/2014. See, Exhibit# 6

Percentage of disability highlights:

70% posttraumatic stress disorder with bruxism, and traumatic brain injury:

“A 70 percent rating envisions occupational and social impairment with deficiencies in most areas, such as work, school, family relations, judgment, thinking, or mood, due to such symptoms as: suicidal ideation; obsessional rituals which interfere with routine activities; speech intermittently illogical, obscure, or irrelevant; near-continuous panic or depression affecting the ability to function independently, appropriately and effectively; impaired impulse control (such as unprovoked irritability with periods of violence); spatial disorientation; neglect of personal appearance and hygiene; difficulty in adapting to stressful circumstances (including work or a work-like setting); and an inability to establish and maintain effective relationships.”

50% Migraine Headaches:

“Under Diagnostic Code 8100, a 50 percent rating is warranted for migraines with very frequent completely prostrating and prolonged attacks productive of severe economic inadaptability.”

South Carolina Police Retirement System (PORS)

Effective date of Disability Retirement: 03/29/2014 See, Exhibit# 7

“Medical Board review not expected”...”The Retirement system has reviewed this medical evidence and determined that you should continue to receive retirement benefits as a member of the Police Officers Retirement System.

City of Columbia 09/10/2014 Letter from Fire Chief Aubrey Jenkins: See, Exhibit#8

“Due to his disability, Terri Capone’s children are entitled to benefits for college educations as stated in SC Code § 59-111-110 (2013).”

City of Columbia 10/20/2014 Letter Fire Chief Aubrey Jenkins:See, Exhibit #8

This letter is to notify you that Terry Capone is a former member of the Columbia Fire Department. On March 29, 2014, Mr. Capone retired on medical disability due to Post Traumatic Stress Disorder.

Sworn Deposition of Dr. Tiona Praylow, Psychiatrist, Envision Wellness Medical Group.

“it is my professional assessment to a reasonable degree of medical certainty that Mr.Capone was of an “unsound mind,” and unable to execute the imperative procedures”. **See, Exhibit #9**

Sworn Affidavit of Mr. Sheryl Mims Williams –Treating Counselor, Agape Counseling and Training Services- May 18, 2015 Altered Medical Health Opinion-“According to Mr. Capone the decision and order dated December 2, 2015 by a Commission McCaskill, was altered due to the letter that was written to the VA”...” Dr. Nicholas Linds, PsyD, Dr. Tiona Praylow, MD as well as I, diagnosed Mr. Capone with PTSD which was aggravated by events he experienced as a firefighter and/or trauma in the work place.” **See, Exhibit 10.**

Psychological Evaluation, Dr. Nichlas A.Lind, PSyD Post Trauma Resources, page 2 of 5“His PTSD were aggravated in 2013 when, as a firefighter, he reported to a traumatic call, which ultimately resulted in his retirement.” **See, Exhibit 11**

Sworn Affidavit of Demetria T Capone Wife, -“VII. April 3, 2015, Dr. Nicholas A.Lind , provided a medical opinion, that stated: “His PTSD were aggravated in 2013 when as a firefighter, he responded to a traumatic call, which ultimately resulted in his retirement”...”in my opinion, he was insane at the time of the 26 June 1989, incident that resulted in his discharge”. See, Post trauma resources see claimants 12/2015 Book 1 of 2 APA’s Pre hearing Brief-“Alleged aggravation of PTSD” p.#14, Pages 13-15 and p.#38, pages 37-41. **See, Exhibit 12**

South Carolina Extension of Limitations Period:

South Carolina Code 15-3-40 (2013) Exceptions as to person under disability If a person entitled to bring an action mentioned in Article 5 of this chapter or an action under Chapter 78 of this title, except for a penalty or forfeiture or against a sheriff or other officer for an escape, is at the time the cause of action accrued either:

- (1) within the age of eighteen years; or
- (2) insane;

the time of the disability is not a part of the time limited for the commencement of the action, except that the

period within which the action must be brought cannot be extended:

- (a) more than five years by any such disability, except infancy; nor
- (b) in any case longer than one year after the disability ceases.

SECTION 15-3-60. Effect of two or more disabilities:

When two or more disabilities shall coexist at the time the right of action accrues the limitation shall

not attach until they all be removed.

Section 15-3-50 Disability must exist when right accrued:

“No person shall avail himself of a disability unless it existed when his right of action accrued.

In addition to these statutory tolling mechanisms, however, “[i]n order to serve the ends of justice where technical forfeitures would unjustifiably prevent a trial on the merits, the doctrine of equitable tolling may be applied to toll the running of the statute of limitations.” 54 C.J.S. Limitations of Actions § 115 (2005). “Equitable tolling is a nonstatutory tolling theory which suspends a limitations period.” *Ocana v. Am. Furniture Co.*, 91 P.3d 58, 66 (N.M. 2004).

Wards of court, infants and persons of unsound mind placed by the court under the care of a guardian. *Davis Committee v. Loney*, 290 Ky. 644, 162 S.W. 2d. 189, 190, **Their rights must be guarded jealously.** *Montgomery v. Erie R. Co.*, C.C.A.N.N.J., 97 F, 2d 289, 292. Blacks law Disctionary, 4th Edition, Page 1755.

We find no occasion to make any extended examination of the law governing Such cases, but it may be properly observed that, for the assumption or continued maintenance of control by a court of chancery over the person and estate of one alleged to be of unsound mind, proof of the entire absence of reason, understanding, or memory is not required. In *Colgate D. Owings Case*, 1 Bland, 386, 17 Am. Dec. 311, the chancellor said: “Under the generic legal term ‘non compos mentis’ is comprehended every species of mental derangement which incapacitates a man from assenting to, or making a legal contract.” And in *Greenwade v. Greenwade*, 43 Md.315, this court said:

“The term ‘non compos mentis’ used by the Code, embraces not only lunatics and idiots, but all persons of unsound mind.” In all jurisdictions, both in England and in this country the disposition of the courts is towards the establishment of a rule, which, whilst jealously guarding against the invasion of rights of person and property under the guise of such proceedings, will afford protection to the person himself and to his family dependent upon him, where any species of mental unsoundness is clearly shown to incapacitate him from protecting him and them

against his own weakness or the artifice of others.”

It is plaintiffs’ claim that proof of adjudication of incompetency presupposes lack of mental capacity to understand the nature and effect of the ward’s acts, is conclusive as a matter of law, not subject to an indirect attack, and until a legal decree is obtained restoring him to legal competency such conditions is conclusively presumed to exist, citing such authority as *Hellman Commercial T. & S. Bank v. Alden*, 206 Cal. 592 [275 P.794]; *Carroll v Carroll*, 16 Cal. 2d 761 [108 P.2d 420]; *Gibson v. Westoby*, 115 Cal. App. 2d 273 [251 P.2d 1003], See also 27 California Jurisprudence 2 d page 359, section 35, where it is said:

“A person of unsound mind whose incapacity has been [169 Cal. App. 2d 500] judicially determined cannot make a contract or delegate any power until his restoration to capacity. Such an adjudication constitutes notice ‘to all the world’ of incapacity. It amounts to an adjudication in rem, conclusive as such. Whenever it is binding on any person, it is equally binding on all persons, though they have constructive notice only. Hence, where mental incapacity has been adjudged, no further evidence of mental incapacity is required while the decree remains in full force and effect; proof of the adjudication of incompetency amounts to proof of lack of mental capacity to understand the nature and effect of the transaction involved. This is true regardless of the character or degree of mental derangement involved.” (See also *Condec*, California Probate Court Practice, vol II, p. 219.)

Some personal injury victims who sustain serious traumatic brain injury are often considered by law to be of “unsound mind.” A person of “unsound mind” is unable to manage his affairs or to understand his legal rights or liabilities. *Sahf v. Lake Havasu City Assn’ for the Retarded*, 150 Ariz. 50, 55, 721 P.2d 1177, 1182 (1986); *Allen v. Powell’s Int’l, Inc.*, 21 Ariz. App. 269, 270, 518 P.2d 588, 589 (1974).

**III. VIOLATIONS OF CONSTITUTIONAL PROTECTIONS TO INCLUDE
PROCEDURAL DUE PROCESS AND SUBSTANTIVE DUE PROCESS.
APPELLANTS/PETITIONERS FUNDAMENTAL RIGHTS; PROPERTY
RIGHT/INTEREST.**

The Appellant/ Petitioner as a Firefighter permanently disabled in the line of duty the State of South Carolina shows great difference.

I have a *Fundamental Right, a protected right/interest* in any benefits (property) arising, as a result of being a “Firefighter that is permanently disabled in the line of duty” under the South Carolina Constitution:

- Pursuant to the provisions of Section 3 of Article X of the state constitution and subject to the provisions of Section 12-4-720, there is exempt from Ad Valorem Taxation
- Tuition waived for four years of undergraduate study at state-supported colleges, universities, or vocational or technical schools. Children must be 18-22 years of age at the time of application. Applies to career and volunteer firefighters (Reference: SC Code 59-110-111)

“[T]o have a property interest in a benefit, a person clearly must have more than an abstract need of desire’ and more’ than a unilateral expectation of it. He must, instead have a legitimate claim to entitlement to it.” Idat 1297(alteration in original)(citing Town of Castle Rock, Colo. v. Gonzales, 545 U.S. 748, 756(2005)(quoting Bd. Regents of State Collis. V. Roth, 408 U.S. 564, 577(1972))

The Appellant/Petitioner as a Firefighter have a Property Right/Interest in a Claim for Workers’ Compensation Benefits:

[W]hen a plaintiff’s personal injury is filtered through the [Workers Compensation System], it is converted into a property rights”. App., infra, 32a.

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).

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.

The Commissioner Gene McCaskill committed Fraud Upon the Court when in his December 2, 2015

Decision and Order denied Mr. Capone Due Process, Procedural and Substantive Due Process committing Fraud Upon the Court , when he omitted key evidence and altered the April 2015 medical opinion, then quoted it as, a FINDING OF FACT-#18. “As to the Claimant’s Post Traumatic Stress Disorder claim being casually related to his employment, there is nothing in the record, other than the subjective complaints of the Claimant, that establish the origin or aggravation of the Claimant’s Post Traumatic Stress Disorder”...#19. “That is not to say that the Claimant does not suffer from Post Traumatic Stress Disorder. However, it appears from the notes of both Dr. Nicholas Lind and Sheryl Mims-Williams, both of whom have a professional specialization to the Mind, that the Claimant does not suffer from Post Traumatic Stress Disorder which is casually related to his employment with the City.

Actual Unaltered version:Page #2, Dr. Nicholas Lind notes:“ His PTSD were aggravated in 2013 when, as a firefighter, he responded to a traumatic call, which ultimate resulted in his retirement”.(Post Trauma Resources 3 April 2015).

This Single Commissioner and Commission relied on the omitted evidence and altered the medical records (Specifically Dr. Linds medical opinion) in its decision to deny/ devaluation of benefits (property) and such reliance was prejudicial to the Appellants/ Claimants claim, the Single Commissioner Gene Henry McCaskill in his Workers’ Compensation Scheme denied Mr. Capone Due Process, Procedural and Substantive Due Process and Justice for non-discretionary and statutorily –mandated Workers’ Compensation disability benefits (property) Mr. Capone has a substantial property right /interest in, by the due process clause of the Fifth Amendment entitling him to a full and fair impartial hearing. 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.

IV.

UNCLEAN HANDS/ FRAUD ON THE COURT

As an additional sustaining ground, Doctrine of Unclean Hands:

The doctrine of unclean hands “precludes a plaintiff from recovering **in equity** if he acted unfairly in a Matter that is subject of litigation to the prejudice of the defendant.” Ingram v. Kasey’s Assocs., 340 S.C.98, 107 n. 2, 531 S.E. 2d 287, 292 n.2, (2000) (emphasis added). The equitable doctrine of unclean hands, however, has no application to an action in law. E.g., Holmes v. Henderson, 549 S.E.2d 81 (Ga. 2001); Ellwood v. Mid States Commodities, Inc., 404 N.W.2d 174, 184 (Iowa 1987).

In addition, The Court has been provided with proof that the City of Columbia Defendants/ Respondents committed Fraud Upon the Court, Insurance Fraud, and other actionable violation of law, in the devaluation of my South Carolina Workers Compensation Benefits in violation, after their denial of the 2015 claim, I was not made aware until on or about December 2017, City was aware of Mold (Fungus) in Fire Stations because a published article dated: Thursday, May 21st 2015, Showed two types: ASpergillus/Penicillium and **Chaetomium**”. **The same mold determined in my lab results 6/2013.** The Respondents concealed this (see exhibits#9;17;18; 20 Attorney Thye Email) and submitted the incorrect average weekly wage, because they had changed the way firefighters shift pay was determined and did not inform me or the Commission of the change. Attorney Dana Thye for the City of Columbia Respondents and the Single Commissioner Gene McCaskill, Commission and Richland County Ombudsman unfairly omitted evidence in their possession to deny the claims depriving me of my fundamental right to Workmens’ Compensation Benefits, which deprived me of all "economically viable use" of my Workmens’ Compensation Benefits /Property and therefore effected a "taking" under the Fifth and Fourteenth Amendments, as applicable to the State that required the payment of just compensation. See, e. g., *Agins v. City of Tiburon*, [447 U. S. 255](#), 261.

Fraudulent Concealment

The fraudulent concealment exception applies where an employer fraudulently conceals a worker's injury and its connection to employment whereby the concealment results in an aggravation of the injury. There are three necessary elements: (1) the employer conceals the existence of the injury; (2) the employer concealed the connection between the injury and employment; and (3) the injury was aggravated following the employer's concealment. (Lab. Code, § 3602, subd, (b); *Jensen v. Amgen* (2003) 105 Cal. App 4th 1322, 1325; see also, *Palestini v. General Dynamics Corp.* (2002) 99 Cal. App. 4th 80.) **The fraudulent concealment exception more typically arises in situations involving exposure to asbestos, mold, or toxic chemical.** (See, e.g. *John-Manville Products v. Sup. Ct* (1980) 27 Cal. 3d 465.) It is a very limited exception that requires actual knowledge by the employer and a lack of wareness by the worker of the injury and its relationship to employment.

South Carolina tribunals have the inherent power to reopen agreements and judgments procured by fraud. See *Raby Const., L.L.P. v. Orr*, 358 S.C. 10, 18, 594 S.E.2d 478, 482 (2004) (citing *Bryan v. Bryan*, 220 S.C. 164, 66 S.E.2d 609 (1951); see also *Greenfield v. Greenfield*, 245 S.C. 604, 141 S.E.2d 920 (1965) (holding "the inherent powers of a court, which are essential to its existence and protection and to the due administration of justice within the scope of the jurisdiction expressly conferred, do not depend upon express constitutional or legislative grant").

SCRCP.(emphasis in original) fraud, misrepresentation, or other misconduct of an adverse party (In South Carolina, extrinsic fraud is the only type of fraud for which relief may be granted) *Raby const., L.L.P.*, 358 S.C at 20, 594 S.E.2d at 483; *Jamison v. Ford Motor Co.*, 373 S.C. 248, 273, 644 S.E.2d 755, 768 (Ct. App. 2007). Extrinsic fraud is "fraud that induces a person not to present a case or deprives a person of the opportunity to be heard." *Hilton Head ctr. Of S.C. v. Public Serv. Comm.*, 294 S.C. 9, 11, 362 S.E.2d 176, 177 (1987). "Relief is granted for extrinsic fraud on the theory that because the fraud prevented a party from fully exhibiting and trying his case, there has never been a real contest before the court on the subject matter of the action." *Id.* The essential distinction between intrinsic and extrinsic fraud for purposes of relief from

judgment is the ability to discover the fraud. Ray v. Ray, 374 S.C. 79, 84, 647 S.E.2d 237, 239 (2007)

No person shall be deprived of life, liberty, or property without due process of law. U.S. Const. amend. XIV, § 1; S.C. Const. art. I, § 3. In order to prove a denial of substantive due process, a party must show that he was arbitrarily and capriciously deprived of a cognizable property interest rooted in state law. Sunset Cay, 357 S.C. at 430, 593 S.E.2d at 470; Worsley Companies, Inc. v. Town of Mt. Pleasant, 339 S.C. 51, 528 S.E.2d 657 (2000). A “legislative act will not be declared unconstitutional unless its repugnance to the constitution is clear and beyond a reasonable doubt.” Joytime Distribs. and Amusement Co., 338 S.C. at 640, 528 S.E.2d at 650.

A following section, 15-3-670, provides, in part:

The limitation provided in §§ 15-3-640 through 15-3-660 may not be asserted as a defense by any person in actual possession or control, as owner, tenant, or otherwise, of the improvement at the time the defective or unsafe condition constitutes the proximate cause of the injury or death for which it is proposed to bring an action, in the *352 event such person in actual possession or control knows, or reasonably should have known, of the defective or unsafe condition.

(Emphasis supplied.)

Fraudulent intent is "a condition of the mind beyond the reach of the senses," which is "usually kept secret, and can only be proved by unguarded expressions, conduct and circumstances generally." State v. Jordan, 255 S.C. 86, 90, 177 S.E.2d 464, 465 (1970).

As a general rule, any act or conduct on the part of the accused is admissible as some evidence of consciousness of guilt. State v. McDowell, 266 S.C. 508, 224 S.E.2d

889 (1976). "Fraud may be deduced not only from deceptive or false representations,

but from facts, incidents, and circumstances which may be trivial in themselves, but decisive in a given case of fraudulent design." Cook v. Metropolitan Life Ins. Co., 186 S.C. 77, 84, 194 S.E. 636, 639 (1938).


CONCLUSION

Based on the above, and for all of the reasons supported by the pleadings and papers on file with the Court and addressed herein, Pro se Appellant/Petitioner Terry Capone's Notice of Petition/Motion To Reinstate the Appeal of a VOID Order/decision is timely and the Appeal should be reinstated, to dismiss it would continue to deprive him of fundamental and substantial rights are affected, and the court may set aside the void judgment/decision that were entered against him at the heart of this appeal, as Good Cause has been shown. The Appellant alternately request that any opposition to this Petition/Motion from the Respondent should be denied for Unclean hands, Fraud on The Court and other violations of the law, Appellant/Petitioner so moves. See, Exhibits 1-12.

I certify under penalty of perjury that the Forgoing statement is true and correct to the best of my knowledge and belief.

Executed on this date March 25, 2021

By: _____


Mr. Terry H. Capone
Fire Battalion Chief-Retired
1 Arsenal Hill Court
Columbia, South Carolina 29201
Email: tcapone@liberty.edu
(803) 622- 6578

Richland, South Carolina
March 25, 2021

Eosure(s) as stated
Cc: Cythia Dooley, Carmelo Sammataro
Attorney's for Respondents

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

Appellant's motion to hold this appeal in abeyance is denied. Furthermore, Appellant has failed to serve the record on appeal and file a proof of service as required by Rule 210 of the South Carolina Appellate Court Rules and this court's September 3, 2020 letter, February 4, 2021 letter, and February 17, 2021 letter. Accordingly, this appeal is dismissed. The remittitur will be sent as required by Rule 221, SCACR.



FOR THE COURT

Columbia, South Carolina

FILED
Mar 12 2021

cc:

Terry Capone

Cynthia C. Dooley, Esquire

Carmelo Barone Sammataro, Esquire

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

EXHIBIT

#2

Sold by **gotlaptopparts** (<https://www.ebay.com/usr/gotlaptopparts>)

(35542 (<https://feedback.ebay.com/ws/eBayISAPI.dll?>

ViewFeedback&userid=gotlaptopparts))

Order number: 14-06665-24111



HP 15.6" 15-af174nr LCD Video Cable w/Webcam DC020027J0...

Contact seller (<https://contact.ebay.com/ws/eBayISAPI.dll?FindAnswers&frm=3998&iid=254575427723&redirect=0&requested=gotlaptopparts>) | Return item (<https://www.ebay.com/rtn/Return/ReturnViewSelectedItem?transactionId=2752604994015&itemId=254575427723&trksid=p2057872.m2749.I3185>) | Sell this item (<https://www.ebay.com/si/list?mode=SellLikeItem&itemId=254575427723>)

Delivered on **Fri, Mar 5, 2021**
- Hide shipping details

Your item was delivered.



[See full tracking history](#)



HP 15.6" 15-af174nr LCD Video Cable w/Webcam DC020027J00 813961-001 708231-1B5
(<https://www.ebay.com/itm/254575427723>)

Item price \$14.39
Quantity 1
Item number 254575427723
Shipping service USPS First Class

Shipping address

Terry Capone
4209 Woodridge Drive
Columbia SC 29203-3749
United States

Order total

Subtotal	\$14.39
Shipping	Free
Tax	\$1.15
Total	\$15.54

Order placed on
Mon, Mar 1, 2021

Payment method
Credit/Debit card

Payment date
Mon, Mar 1, 2021

Sold by **dealspart** (<https://www.ebay.com/usr/dealspart>) (12723

(<https://feedback.ebay.com/ws/eBayISAPI.dll?>

ViewFeedback&userid=dealspart))

Order number: 16-06686-65052



DC POWER JACK HARNESS CABLE FOR HP Pavilion 15-af147ca ...

Contact seller (<https://contact.ebay.com/ws/eBayISAPI.dll?>

FindAnswers&frm=3998&iid=283180480467&redirect=0&requested=dealspart) | Leave feedback

(<https://feedback.ebay.com/ws/eBayISAPI.dll?>

LeaveFeedbackShow&useridfrom=theunderground1954&useridto=dealspart&item=283180480467&transactid=2256624529018)

| Return item (<https://www.ebay.com/rtn/Return/ReturnViewSelectedItem?>

transactionid=2256624529018&itemId=283180480467&_trksid=p2057872.m2749.l3185) | Sell this item

(<https://www.ebay.com/sell/list?mode=SellLikeItem&itemId=283180480467>)



Delivered on **Sat, Mar 20, 2021**

- Hide shipping details

Your item was delivered.



[See full tracking history](#)



DC POWER JACK HARNESS CABLE FOR HP Pavilion 15-af147ca 15-af152ur 15-af161ca

(<https://www.ebay.com/itm/283180480467>)

Item price \$6.99
 Quantity 1
 Item number 283180480467
 Shipping service Standard Shipping

Shipping address

Terry Capone
4209 Woodridge Drive
Columbia SC 29203-3749
United States

Order total

Subtotal	\$6.99
Shipping	Free
Tax	\$0.56
Total	\$7.55

Order placed on
Fri, Mar 5, 2021

Payment method
Credit/Debit card

Payment date
Fri, Mar 5, 2021

EXHIBIT

#3

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 assesement & date was not included in the summary? I would like a copy of the transcript and written directions on how to appeal these findings please; I know its \$150.00 fee. Thank you

Terry Capone

CONFIDENTIAL & PRIVILEGED

The preceding email message, including any attachments, may be confidential and/or protected by the attorney-client or other applicable privileges. It is intended for the sole use of the individual or entity named above. If the reader of this transmission is not the intended recipient, please notify the sender immediately and destroy any copies, electronic, paper or otherwise, that you may have of this communication. Any unauthorized review, use, disclosure or distribution is strictly prohibited and may be unlawful.

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

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

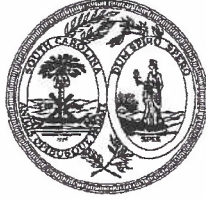
I would affirm.

EXHIBIT

#4

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.

South Carolina Workers' Compensation Commission

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

RETURN SERVICE REQUESTED

NEOPOST

FIRST-CLASS MAIL

08/05/2020

US POSTAGE

\$000.65

8/5/20

PSRPT FCL



ZIP 29201
041M11467270

GAJ5SNP 29203



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

130 Summerlea

67-7873/2539
05

1485

~~DATE~~ 7/22/2020

Pay to the order of

SC WCC

\$ 50.00

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

Notice Temporary Comp #1319203
HAS been stopped
WCC Form #15-11 Never filed
Additional Compensation
H/S RATA

⑆ 253978730⑆ 20009632789 8⑈ 1485

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

130 Summerlea Dr

67-7873/2539
05

1483

~~DATE~~ 7/22/20

Pay to the order of

SC WCC

\$ 50.00

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

Notice Temporary Comp #1319203
HAS been stopped
WCC Form #15-11 Never filed
Additional Compensation
H/S RATA

⑆ 253978730⑆ 20009632789 8⑈ 1483



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



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 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).

Calculation of Temporary Partial Rate:

	Average weekly wage before injury	
-	Current weekly wage	
=	Difference in wages before injury and now	\$0.00
x	.6667	\$0.00
	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 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.

WORKERS' COMPENSATION

	Reg.
67-501. Terminating Payment of Temporary Total or Temporary Partial Compensation During the First One Hundred Fifty Days After Employer's Notice of the Accident.	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

THE FACE OF THIS DOCUMENT HAS A COLORED BACKGROUND - NOT A WHITE BACKGROUND
THE BACK OF THIS DOCUMENT CONTAINS AN ARTIFICIAL WATERMARK - HOLD AT AN ANGLE TO VIEW



City of Columbia Workers Compensation
COMPANION TPA, LLC - ADMINISTRATOR
P. O. BOX 100159 COLUMBIA, SC 29202-3165

No. 0000151461

32.1
15/0

CLAIM NO: 700000004250-0001 LOSS DATE: 10/12/13
POLICY NO: CCW 0000001 INSURED'S NAME: CITY OF COLUMBIA

DATE: 01/06/14 CHECK NO.: 0000151461
CLAIMANT NAME: TERRY CAPONE

TWO THOUSAND SEVEN HUNDRED TWENTY NINE & 48/100

DOLLARS \$2,729.48

PAY TO THE ORDER OF: TERRY CAPONE

Void after 6 months

CASHIER: For your protection,
require two IDs from payee.

AUTHORIZED SIGNATURE

⑈0000151461⑈ ⑆111000012⑆ 442 657 0149⑈

PLEASE TEAR AT PERF TO DETACH CHECK

FEB:1111111111

Coverage: WORKERS COMPENSATION

Cause of Loss: WORKERS COMPENSATION

Explanation of Payment:

TEMPORARY TOTAL DISABILITY FROM 12/6/13 - 1/2/14 (4WKS)

If you have any questions concerning this payment,
please contact Doris Quizhpe at ext. 44262



Acct #:

State: 39

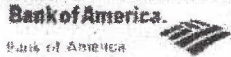
MCO: 01

TERRY CAPONE

4209 WOODRIDGE DRIVE
COLUMBIA, SC

29203

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THE BACK OF THIS DOCUMENT CONTAINS AN ARTIFICIAL WATERMARK - HOLD AT AN ANGLE TO VIEW



City of Columbia Workers Compensation
COMPANION TPA, LLC - ADMINISTRATOR
P. O. BOX 100159 COLUMBIA, SC 29202 3165

No. 0000151494

CLAIM NO: 700000004250 0001 LOSS DATE: 10/12/13 DATE: 01/07/14 CHECK NO.: 0000151494
POLICY NO: CCM 3000001 INSURED'S NAME: CITY OF COLUMBIA CLAIMANT NAME: TERRY CAPONE

SIX HUNDRED EIGHTY TWO & 37/100

DOLLARS \$682.37

PAY TO THE ORDER OF: TERRY CAPONE

Void after 6 months

CASHER: For your protection, require two IDs from payee.

AUTHORIZED SIGNATURE

⑈0000151494⑈ ⑆111000012⑆ 442 657 0149⑈

PLEASE TEAR AT PERF TO DETACH CHECK

FIN:111111111

Coverage: WORKERS COMPENSATION

Cause of Loss: WORKERS COMPENSATION

Explanation of Payment:

TT TERRY CAPONE 01/03/2014 TO 01/09/2014

If you have any questions concerning this payment,
please contact Doris Quizhpe at ext. 44262



Acct #:

State: 39

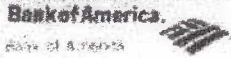
MCO: 01

TERRY CAPONE

4209 WOODRIDGE DRIVE
COLUMBIA, SC

29203

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THE BACK OF THIS DOCUMENT CONTAINS AN ARTIFICIAL WATERMARK - HOLD AT AN ANGLE TO VIEW



City of Columbia Workers Compensation
COMPANION TPA, LLC - ADMINISTRATOR
P. O. BOX 100159 COLUMBIA, SC 29202-3165

No. 0000151611

2014
1/14

CLAIM NO: 700000006250-0001 LOSS DATE: 10/12/13 DATE: 01/14/14 CHECK NO.: 0000151611
POLICY NO: COW 0000001 INSURED'S NAME: CITY OF COLUMBIA CLAIMANT NAME: TERRY CAPONE

SIX HUNDRED EIGHTY TWO & 37/100

DOLLARS \$682.37

PAY TO THE ORDER OF TERRY CAPONE

Valid after 6 months

CASHIER: To your protection, require two IDs from a client.

AUTHORIZED SIGNATURE

⑈0000151611⑈ ⑆111000012⑆ 442 857 0149⑈

PLEASE TEAR AT PERF TO DETACH CHECK

⑈11111111⑈

Coverage: WORKERS COMPENSATION

Cause of Loss: WORKERS COMPENSATION

Explanation of Payment:

TT TERRY CAPONE 01/10/2014 TO 01/16/2014

If you have any questions concerning this payment,
please contact Dexis Quizhpe at ext. 44262



Acct #:

State: 39

MCO: 01

TERRY CAPONE

4209 WOODRIDGE DRIVE
COLUMBIA SC

29201

EXHIBIT

#5

**SOCIAL SECURITY ADMINISTRATION**

Office of Disability Adjudication and Review
SSA ODAR NHC
Bldg. 110, 2nd Floor
4300 Goodfellow Blvd
Saint Louis, MO 63120

Date: September 12, 2016

Terry H Capone
130 Summerlea Dr
Columbia, SC 29203

Notice of Decision – Fully Favorable

I carefully reviewed the facts of your case and made the enclosed fully favorable decision. Please read this notice and my decision.

Another office will process my decision. That office may ask you for more information. If you do not hear anything within 60 days of the date of this notice, please contact your local office. The contact information for your local office is at the end of this notice.

If You Disagree With My Decision

If you disagree with my decision, you may file an appeal with the Appeals Council.

How To File An Appeal

To file an appeal you or your representative must ask in writing that the Appeals Council review my decision. You may use our Request for Review form (HA-520) or write a letter. The form is available at www.socialsecurity.gov. Please put the Social Security number shown above on any appeal you file. If you need help, you may file in person at any Social Security or hearing office.

Please send your request to:

Appeals Council
Office of Disability Adjudication and Review
5107 Leesburg Pike
Falls Church, VA 22041-3255

Time Limit To File An Appeal

You must file your written appeal within 60 days of the date you get this notice. The Appeals Council assumes you got this notice 5 days after the date of the notice unless you show you did

Form HA-L76 (03-2010)

Suspect Social Security Fraud?

Please visit <http://olg.ssa.gov/r> or call the Inspector General's Fraud Hotline
at 1-800-269-0271 (TTY 1-866-501-2101).

See Next Page

**SOCIAL SECURITY ADMINISTRATION
Office of Disability Adjudication and Review**

DECISION

IN THE CASE OF

CLAIM FOR

Terry H Capone

(Claimant)

Period of Disability and Disability Insurance
Benefits

(Wage Earner)

(Social Security Number)

JURISDICTION AND PROCEDURAL HISTORY

This case is before me on a request for hearing dated September 22, 2014 (20 CFR 404.929 *et seq.*). On August 9, 2016, I held a video hearing (20 CFR 404.936(c)). The claimant appeared in Columbia, SC, and I presided over the hearing from St. Louis, MO. Kenneth E. Ogren, an impartial vocational expert, also appeared at the hearing. The claimant is represented by George T. Sink, an attorney.

The claimant is alleging disability since October 21, 2013.

ISSUES

The issue is whether the claimant is disabled under sections 216(i) and 223(d) of the Social Security Act. Disability is defined as the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment or combination of impairments that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months.

There is an additional issue whether the insured status requirements of sections 216(i) and 223 of the Social Security Act are met. The claimant's earnings record shows that the claimant has acquired sufficient quarters of coverage to remain insured through December 31, 2018. Thus, the claimant must establish disability on or before that date in order to be entitled to a period of disability and disability insurance benefits.

After careful review of the entire record, I find that the claimant has been disabled from October 21, 2013, through the date of this decision. I also find that the insured status requirements of the Social Security Act were met as of the date disability is established.

APPLICABLE LAW

Under the authority of the Social Security Act, the Social Security Administration has established a five-step sequential evaluation process for determining whether an individual is disabled (20 CFR 404.1520(a)). The steps are followed in order. If it is determined that the

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claimant is or is not disabled at a step of the evaluation process, the evaluation will not go on to the next step.

At step one, I must determine whether the claimant is engaging in substantial gainful activity (20 CFR 404.1520(b)). Substantial gainful activity (SGA) is defined as work activity that is both substantial and gainful. If an individual engages in SGA, he is not disabled regardless of how severe his physical or mental impairments are and regardless of his age, education, or work experience. If the individual is not engaging in SGA, the analysis proceeds to the second step.

At step two, I must determine whether the claimant has a medically determinable impairment that is "severe" or a combination of impairments that is "severe" (20 CFR 404.1520(c)). An impairment or combination of impairments is "severe" within the meaning of the regulations if it significantly limits an individual's ability to perform basic work activities. If the claimant does not have a severe medically determinable impairment or combination of impairments, he is not disabled. If the claimant has a severe impairment or combination of impairments, the analysis proceeds to the third step.

At step three, I must determine whether the claimant's impairment or combination of impairments is of a severity to meet or medically equal the criteria of an impairment listed in 20 CFR Part 404, Subpart P, Appendix I (20 CFR 404.1520(d), 404.1525, and 404.1526). If the claimant's impairment or combination of impairments is of a severity to meet or medically equal the criteria of a listing and meets the duration requirement (20 CFR 404.1509), the claimant is disabled. If it does not, the analysis proceeds to the next step.

Before considering step four of the sequential evaluation process, I must first determine the claimant's residual functional capacity (20 CFR 404.1520(e)). An individual's residual functional capacity is his ability to do physical and mental work activities on a sustained basis despite limitations from his impairments. In making this finding, I must consider all of the claimant's impairments, including impairments that are not severe (20 CFR 404.1520(e) and 404.1545; SSR 96-8p).

Next, I must determine at step four whether the claimant has the residual functional capacity to perform the requirements of his past relevant work (20 CFR 404.1520(f)). The term past relevant work means work performed (either as the claimant actually performed it or as it is generally performed in the national economy) within the last 15 years or 15 years prior to the date that disability must be established. In addition, the work must have lasted long enough for the claimant to learn to do the job and have been SGA (20 CFR 404.1560(b) and 404.1565). If the claimant has the residual functional capacity to do his past relevant work, the claimant is not disabled. If the claimant is unable to do any past relevant work or does not have any past relevant work, the analysis proceeds to the fifth and last step.

At the last step of the sequential evaluation process (20 CFR 404.1520(g)), I must determine whether the claimant is able to do any other work considering his residual functional capacity, age, education, and work experience. If the claimant is able to do other work, he is not disabled. If the claimant is not able to do other work and meets the duration requirement, he is disabled. Although the claimant generally continues to have the burden of proving disability at this step, a

Terry H Capone

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limited burden of going forward with the evidence shifts to the Social Security Administration. In order to support a finding that an individual is not disabled at this step, the Social Security Administration is responsible for providing evidence that demonstrates that other work exists in significant numbers in the national economy that the claimant can do, given the residual functional capacity, age, education, and work experience (20 CFR 404.1512(g) and 404.1560(c)).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After careful consideration of the entire record, I make the following findings:

- 1. The claimant's date last insured is December 31, 2018.
- 2. The claimant has not engaged in substantial gainful activity since October 21, 2013, the alleged onset date (20 CFR 404.1520(b) and 404.1571 *et seq.*).

There is no evidence in the evidence of record that the claimant has engaged in substantial gainful activity after the alleged onset date of disability.

- 3. The claimant has the following severe impairments: irritable bowel syndrome, and mental impairments variously diagnosed as post-traumatic stress disorder, depression, and anxiety (20 CFR 404.1520(c)).

The claimant's impairments are considered severe because, they are medically determinable impairments that, when considered either individually or in unison, significantly limit the claimant's mental and physical abilities to do one or more basic work activities. In addition, the claimant's impairments have lasted at a "severe" level for a continuous period of more than 12 months. In particular, the claimant's irritable bowel syndrome, and mental impairments variously diagnosed as post-traumatic stress disorder, depression, and anxiety are severe impairments.

The claimant also suffers from a variety of osteoarthritis, carpal tunnel syndrome, sleep related breathing disorder, and migraine headaches. I find that these conditions appear to be relatively well controlled and these conditions do not individually cause the claimant more than a minimal physical or mental limitation in his ability to do basic work activities. However, these conditions have been considered in my determination of the claimant's residual functional capacity discussed later in this opinion.

- 4. The claimant does not have an impairment or combination of impairments that meets or medically equals the severity of one of the listed impairments in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 404.1520(d), 404.1525 and 404.1526).

The claimant has the following degree of limitation in the broad areas of functioning set out in the disability regulations for evaluating mental disorders and in the mental disorders listings in 20 CFR, Part 404, Subpart P, Appendix 1: mild restriction in activities of daily living, moderate difficulties in maintaining social functioning, moderate difficulties in maintaining concentration,

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Terry H Capone

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persistence or pace, and no episodes of decompensation, each of extended duration. State agency consultants, Janet Boland, PhD, and Jean Wrights, PhD, opined that the claimant suffered mild restrictions in activities of daily living, moderate restrictions in social functioning, and moderate restrictions in concentration, persistence, or pace (Exhibit 1A/8, 4A/11). Their opinions are supported by the medical evidence of record and deserve great weight.

5. The claimant has the residual functional capacity to perform sedentary work as defined in 20 CFR 404.1567(a) except: he would only be able to maintain attention and concentration for 6 hours out of an 8-hour workday.

In making this finding, I have considered all symptoms and the extent to which these symptoms can reasonably be accepted as consistent with the objective medical evidence and other evidence, based on the requirements of 20 CFR 404.1529 and SSR 96-4p. I have also considered opinion evidence in accordance with the requirements of 20 CFR 404.1527 and SSRs 96-2p, 96-6p and 06-3p.

In considering the claimant's symptoms, I must follow a two-step process in which it must first be determined whether there is an underlying medically determinable physical or mental impairment(s)--i.e., an impairment(s) that can be shown by medically acceptable clinical and laboratory diagnostic techniques--that could reasonably be expected to produce the claimant's pain or other symptoms.

Second, once an underlying physical or mental impairment(s) that could reasonably be expected to produce the claimant's pain or other symptoms has been shown, I must evaluate the intensity, persistence, and limiting effects of the claimant's symptoms to determine the extent to which they limit the claimant's work-related activities. For this purpose, whenever statements about the intensity, persistence, or functionally limiting effects of pain or other symptoms are not substantiated by objective medical evidence, I must consider other evidence in the record to determine if the claimant's symptoms limit the ability to do work-related activities.

The claimant is a male alleging disability due to post-traumatic stress disorder, major depression, anxiety, insomnia, obstructive sleep apnea, carpal tunnel syndrome, tension headaches, numbness and pain in hands and arms, and loss of grip strength (Exhibit 15E/2). He alleged that he stopped working in October 2013 because of his conditions (Exhibit 15E/2). Since filing his claim, the claimant alleged a general worsening of his symptoms (Exhibit 9E). He explained that he has had a change for the worse and he suffers from major depression, anxiety in social settings, and homicidal ideation (Exhibit 9E/1).

I have read and considered the *adult function report* completed by the claimant (Exhibit 4E, 1E). The claimant's statements in this function report are of the same general nature as the subjective complaints from the claimant's testimony. He explains that he has difficulty lifting, squatting, bending, standing, reaching, walking, sitting, talking, hearing, seeing, memory, completing tasks, concentrating, understanding, following instructions, using hands, and getting along with others (Exhibit 5E/6). He also explained that he needed reminders and assistance to complete daily tasks (Exhibit 1E). He also explained that he has significant difficulties concentrating (Exhibit 1E, 9E).

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Terry H Capone

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Considering the subjective factors in this case pursuant to SSR 16-3p and 20 C.F.R. 404.1529 and 416.929, the claimant's allegations have been considered in terms of: Daily activities; the location, duration, frequency, and intensity of pain or other symptoms; factors that precipitate and aggravate the symptoms; the type, dosage, effectiveness, and side effects of any medication an individual takes or has taken to alleviate pain or other symptoms; treatment, other than medication, an individual receives or has received for relief of pain or other symptoms; any measures other than treatment an individual uses or has used to relieve pain or other symptoms; and any other factors concerning an individual's functional limitations and restrictions due to pain or other symptoms. Generally, the claimant's statements have been consistent with the medical evidence of record and with my determination herein.

After careful consideration of the evidence, I find that the claimant's medically determinable impairments could reasonably be expected to cause the alleged symptoms. The claimant's statements concerning the intensity, persistence and limiting effects of these symptoms are reasonably consistent with the medical evidence and other evidence in the record for the reasons explained in this decision.

In terms of the claimant's alleged impairments, he suffers from irritable bowel syndrome. He testified that he spends a lot of time in the bathroom. He explained that he suffers from incontinence and diarrhea. He explained that he must wash himself every time he uses the restroom. He suffers from related pain and cramping. Although chronic, his irritable bowel syndrome is unpredictable. I find with the limitations posed by his chronic irritable bowel syndrome and other physical impairments, the claimant is capable of sedentary work except: he would only be able to maintain attention and concentration for 6 hours out of an 8 hour workday.

The claimant also suffers from a variety of mental impairments variously diagnosed as post-traumatic stress disorder, depression, and anxiety. These impairments cause a variety of limitations discussed herein. The claimant testified that he suffers from homicidal and suicidal thoughts. He explained that he has memory problems, is often hypervigilant, and paranoid. He has difficulty being around others. He has difficulty sleeping. With the claimant's combination of mental associated limitations, he would only be able to maintain attention and concentration for 6 hours out of an 8 hour workday.

As for the opinion evidence, I have given significant weight to the opinion of the claimant's treating physician, Dr. Conigliaro Jones (Exhibit 50F). The opinions of the treating physician are considered more reliable because of the duration of the treating relationship, which has been ongoing since 2011 (Exhibit 50F/1) (see 20 CFR 404.1527(d)(2) and 416.927(d)(2)). He opined that the claimant suffered significant limitations as a result of the combination of the claimant's physical problems including irritable bowel syndrome, bilateral knee pain, and carpal tunnel syndrome, complicated by his post-traumatic stress disorder. Specifically, he opined that the claimant could only stand or walk for about 2 hours in an 8 hour workday (Exhibit 50F/2). This aspect of his opinion is given significant weight and it support my assessment of the claimant's exertional abilities discussed herein. Dr. Jones also opined that the claimant suffered a variety of other limitations, including needing unscheduled breaks and missing more than 4 workdays a month, which further support my assessment that the claimant would be off task and unable to

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Terry H Capone

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maintain concentration longer than 6 out of an 8 hour workday. Dr. Jones's opinion regarding the claimant's functional limitations is highly credible because it is well-supported by the objective medical evidence and it is consistent with the record a whole, including the claimant's activities of daily living. Although the final responsibility for determining the issue of disability is reserved to the Commissioner, this opinion of the treating physician is well-supported by clinical and diagnostic findings and is not inconsistent with the other substantial evidence of record.

I give some weight to the opinions of the claimant's mental health provider, Sheryl Williams, MSLPC (Exhibit 48F, 51F). Although a MSLPC is not an acceptable medical source as defined in the regulations, I give some weight to the opinion of Ms. Williams because aspects of it are reasonable and generally consistent with the evidence as a whole (20 CFR 404.1513(a)(e) and 416.913(a)(e)). She has a treating relationship with the claimant (Exhibit 57F/37). Although she opined that the claimant suffered from many marked limitations as a result of his post-traumatic stress disorder and depression, generally her assessment supports my assessment that the claimant would be off task and unable to maintain concentration longer than 6 out of an 8 hour workday. Her opinions are given some weight because they are generally consistent with the medical evidence of record.

I have considered the statement of Tiona Praylow, MD (Exhibit 49F). She stated that the claimant suffers from post-traumatic stress disorder related hyperarousal, hypervigilance, paranoia, and intensive memories, which impair his ability to concentrate and appropriately interact with others (Exhibit 49F/4). She also stated that the claimant's depression results in anhedonia, amotivation, and psychomotor retardation (Exhibit 49F/4). Dr. Praylow's opinions regarding the claimant's limitations deserve some weight. Her assessment supports my assessment that the claimant would be off task and unable to maintain concentration longer than 6 out of an 8 hour workday.

I give little weight to the state agency medical consultants' opinions that the claimant was capable of performing medium exertional work (Exhibit 1A, 4A). Their opinions were rendered without the benefit of the testimony and additional evidence presented at the hearing. Because state agency medical consultants are highly qualified physicians who are experts in the evaluation of the medical issues in disability claims under the Act, the State agency consultants' opinions may have differed greatly if these doctors had been presented with this additional information (SSR 96-6P).

I give some weight to the state agency psychological consultants' opinions as discussed previously. However, based on the additional evidence submitted at the hearing level, I find that the claimant is further limited. As discussed herein, I find that his mental health impairments limit him such that he would only be capable of working 6 out of an 8 hour workday.

I have read and considered the *third party function report* completed by the claimant's spouse, Demetria Capone, in February 2014 (Exhibit 6E). This report provides some insight into the claimant's daily activities and functional limitations. It is somewhat consistent with the other evidence of record and therefore given partial weight.

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Terry H Capone

Page 7 of 8

Based on the foregoing, I find the claimant has the above residual functional capacity assessment, which is supported by the objective medical evidence of record, such as hospital and treatment records; as well as the subjective evidence consisting of the testimony and previous statements of the claimant as to her abilities to complete daily activities. Thus, I find that the claimant retains the residual functional capacity for the range identified above.

6. The claimant is unable to perform any past relevant work (20 CFR 404.1565).

The demands of the claimant's past relevant work exceed the residual functional capacity.

7. The claimant was a younger individual age 18-44 on the established disability onset date (20 CFR 404.1563).

8. The claimant has at least a high school education and is able to communicate in English (20 CFR 404.1564).

9. The claimant's acquired job skills do not transfer to other occupations within the residual functional capacity defined above (20 CFR 404.1568).

10. Considering the claimant's age, education, work experience, and residual functional capacity, there are no jobs that exist in significant numbers in the national economy that the claimant can perform (20 CFR 404.1560(c) and 404.1566).

In determining whether a successful adjustment to other work can be made, I must consider the claimant's residual functional capacity, age, education, and work experience in conjunction with the Medical-Vocational Guidelines, 20 CFR Part 404, Subpart P, Appendix 2. If the claimant can perform all or substantially all of the exertional demands at a given level of exertion, the medical-vocational rules direct a conclusion of either "disabled" or "not disabled" depending upon the claimant's specific vocational profile (SSR 83-11). When the claimant cannot perform substantially all of the exertional demands of work at a given level of exertion and/or has nonexertional limitations, the medical-vocational rules are used as a framework for decisionmaking unless there is a rule that directs a conclusion of "disabled" without considering the additional exertional and/or nonexertional limitations (SSRs 83-12 and 83-14). If the claimant has solely nonexertional limitations, section 204.00 in the Medical-Vocational Guidelines provides a framework for decisionmaking (SSR 85-15).

The DOT does not specifically address breaks or absenteeism. However, these restrictions reflect the inability of claimant to participate in sustained work-related physical and mental activities in a work setting on a regular and continuing basis as defined in Social Security Ruling(s) 96-8p and 96-9p. Because the claimant would only be able to maintain attention and concentration for 6 out of 8 hour workday, I find that this demonstrates his inability to participate in work-related mental and physical activities on a regular and continuing basis.

If the claimant had the residual functional capacity to perform the full range of sedentary work, considering the claimant's age, education, and work experience, a finding of "not disabled" would be directed by Medical-Vocational Rule 201.28. However, the additional limitations so

1.988 cz 084888-003-03100609 0903028 00-03841 1-0008

Terry H Capone

Page 8 of 8

narrow the range of work the claimant might otherwise perform that a finding of "disabled" is appropriate under the framework of this rule. This conclusion is supported by Social Security Rulings 96-9p and 96-8p.

11. The claimant has been under a disability as defined in the Social Security Act since October 21, 2013, the alleged onset date of disability (20 CFR 404.1520(g)).

DECISION

Based on the application for a period of disability and disability insurance benefits filed on December 26, 2013, the claimant has been disabled under sections 216(i) and 223(d) of the Social Security Act since October 21, 2013.

/s/ A. Benton

A. Benton
Administrative Law Judge

September 12, 2016
Date

EXHIBIT

#6



Department of Veterans Affairs
A.J. Celebrezze Federal Building
1240 East 9th Street
Cleveland, OH 44199

March 22, 2021

In Reply Refer To:

TERRY CAPONE
 1 ARSENAL HILL CT
 COLUMBIA SC 29201

Capone T H .72

Dear Terry H Capone.

This is in reply to your request for a statement verifying your service-connected disabilities.

Department of Veterans Affairs (VA) records show your service-connected disabilities are as follows:

<u>Percentage</u>	<u>Disability</u>	<u>Diag Code</u>
70	posttraumatic stress disorder with bruxism, and traumatic brain injury	9411
50	migraine headache	8100
10	peripheral neuropathy, right lower extremity	8520
10	tinnitus (claimed as noise in ear bilateral hissing, ringing also other auditory perceptions bilateral dizziness and giddiness)	6260

90 **Combined Rating**

Do You Have Questions or Need Assistance?

If you have any questions, you may contact us by telephone, email or letter.

If you	Here is what to do.
Telephone	Call us at 1-800-827-1000. If you use a Telecommunications Device for the Deaf (TDD), the number is 711.
Use the Internet	www.VA.gov

Write	Put your full name and VA file number on the letter. Please send all correspondence to the address below: Department of Veterans Affairs Claims Intake Center PO Box 5235 Janesville, WI 53547-5235
-------	---

With sincere regard for the Veteran's service,

RO Director
VA Regional Office

To email us visit <https://iris.custhelp.va.gov>

Do you know about VA.gov?

The new VA.gov design focuses on the top information Veterans seek out across all VA websites. This homepage also provides Veterans with a standard way to log in to access a personalized user experience. Users are able to log into VA.gov via their existing MyHealtheVet, DS Logon, or ID.me credentials.

As VA continues to transition self-service capabilities from eBenefits to VA.gov, there are limited functions available exclusively in eBenefits. All eBenefits functionality has been transitioned to VA.gov except:

- Adding/removing dependents
- Request for Certificate of Eligibility
- DD/EFT for Education benefits
- Chapter 31 VRE application
- POA Search and VAF 21-22/a submission
- Specially Adapted Housing (SAH) or Special Home Adaptation (SHA) grant application
- Order prosthetic socks
- View My Document

To register for an account, follow the online prompts on VA.gov.



Department of Veterans Affairs
A.J. Celebrezze Federal Building
1240 East 9th Street
Cleveland, OH 44199

March 22, 2021

In Reply Refer To:

TERRY H CAPONE
1 ARSENAL HILL CT
COLUMBIA SC 29201

72
Capone T H

Dear Terry H Capone,

This letter is a summary of benefits you currently receive from the Department of Veterans Affairs (VA). We are providing this letter to disabled Veterans to use in applying for benefits such as state or local property or vehicle tax relief, civil service preference, to obtain housing entitlements, free or reduced state park annual memberships, or any other program or entitlement in which verification of VA benefits is required. Please safeguard this important document. This letter is considered an official record of your VA entitlement.

Our records contain the following information:

Personal Claim Information

Your VA claim number is: .72
You are the Veteran.

Military Information

The character(s) of discharge and service date(s) of the veteran include:
Honorable for VA Purposes, Marine Corps, 10/26/1988-04/16/1997
(There may be additional periods of service not listed above)

VA Benefits Information

Service-connected disability: Yes
Your combined service-connected evaluation is: 90%
Your current monthly award amount is:
Are you entitled to a higher level of disability due to being unemployable: Yes
Are you considered to be totally and permanently disabled due to your service-connected disabilities:
Yes
Are you service-connected for loss of or loss of use of a limb, or are you totally blind in or missing at least one eye: No
Have you received a Specially Adapted Housing (SAH) and/or Special Home Adaptation (SHA) grant: No

You should contact your state or local office of veterans' affairs for information on any tax, license, or fee-related benefits for which you may be eligible. State offices of veterans' affairs are available at <http://www.va.gov/statedva.htm>.

Do You Have Questions or Need Assistance?

If you have any questions, you may contact us by telephone, email or letter.

If you	Here is what to do.
Telephone	Call us at 1-800-827-1000. If you use a Telecommunications Device for the Deaf (TDD), the number is 711.
Use the Internet	www.VA.gov
Write	Put your full name and VA file number on the letter. Please send all correspondence to the address below: Department of Veterans Affairs Claims Intake Center PO Box 5235 Janesville, WI 53547-5235

With sincere regard for the Veteran's service.

RO Director
VA Regional Office

To email us visit <https://iris.custhelp.va.gov>

EXHIBIT

#7

South Carolina Retirement Systems

THIS DOCUMENT CONTAINS IMPORTANT INFORMATION ABOUT YOUR BENEFITS. DO NOT DISCARD.

NOTICE OF REAPPROVAL OF DISABILITY RETIREMENT

Medical Board Review Not Expected

TERRY H CAPONE
130 SUMMERLEA DR
COLUMBIA SC 29203-5532

SSN:
Appl ID:
System: PORS
Type: Disability
Date: April 13, 2017

When the South Carolina Retirement Systems originally approved your claim for disability retirement with an effective date of 03/29/2014, our office did so with the stipulation that you provide us with periodic medical evidence of continuing disability in order to continue receiving these benefits. As a result, we recently asked you to provide us with current medical evidence so we could determine if you should continue to receive disability retirement benefits. **The Retirement Systems has reviewed this medical evidence and determined that you should continue to receive retirement benefits as a member of the Police Officers Retirement System.** Because we now believe that further medical improvement is unlikely, we do not anticipate the need for you to provide medical evidence of continuing disability in the future.

Please call Customer Service at 1-800-868-9002 or (803) 737-6800 if you have any questions or would like any further information.

SC Public Employee Benefit Authority • South Carolina Retirement Systems

202 Arbor Lake Drive • Post Office Box 11960 • Columbia, South Carolina 29211

803-737-6800 • 800-868-9002

DISABILITY RATIONALE
SOUTH CAROLINA RETIREMENT SYSTEM

NAME: TERRY H CAPONE

SSN:

CLAIM TYPE: SCRS

MEDICAL SOURCES

MOORE ORTHOPAEDIC CLINIC, 01/27/14
ENVISION WELLNESS MEDICAL GROU, 02/27/14
ELLIS PHYSICAL THERAPY ASSOCS, 02/21/14
PALMETTO RICHLAND MEM HOSPITAL, 02/17/14
THIRD PARTY REPORT, 02/24/14
SLEEPMED INC, 02/06/14
ENVISION WELLNESS MEDICAL GROU,
MOORE ORTHOPAEDIC CLINIC PA,

RATIONALE

This 43-year-old applicant alleges disability from 10/21/13 due to PTSD, anxiety and injuries to his hand. The applicant is a firefighter, Battalion chief. This occupation is skilled work requiring heavy physical exertion and capacity. The applicant states that difficulties began after an incident in October 2013 where he suffered an injury to his hand during the performance of duties. He stated he developed reduced grip strength and numbness in his arms and hands. The applicant also reports symptoms and experiences related to PTSD. The record documents several other situations where the applicant sustained injuries and was involved in dangerous threatening situations. The medical records document the diagnosis of carpal tunnel symptoms that affect the use and function of his hands. He also experiences weakness of grip and pain in his hands. Nerve conduction studies document mild carpal tunnel syndrome. The evidence documents continued treatment for PTSD symptoms associated with multiple events and work-related stressors. The applicant also has symptoms of depression, anxiety, panic attacks and mood ability. The treating source also documents excessive rumination, paranoia and hyperarousal. The applicant is also expressed homicidal and passive suicidal ideation. Current evidence documents moderate functional limitations with respect to his daily activities, social function and maintaining concentration and pace. The applicant exhibits moderate limitations with his ability to understand and remember detailed instruction, carry out detailed instructions as well as maintaining attention and concentration for extended periods. He also has difficulty working in close proximity of other employees and his ability to maintain a normal workday and workweek without interruptions from psychologically based symptoms is limited. Due to his mental condition, the applicant would have significant difficulty with function in a stressful work environment requiring skilled, concentration and attention. He is able to make simple work related decisions and adjustments but only in unskilled work situations. Recommendation for allowance of this claim is made, recommended onset 10/21/13. He does not retain the functional capacity to perform duties of his past work as a Firefighter. The record documents the applicant is continuing to receive psychiatric treatment and therapy. It is expected that with continued treatment his medical condition may improve. A medical re-examination date of 2/2017 is indicated.

DDS Examiner

March 6, 2014

Claim No: 049890
RSRAT (3/07)

RECEIVED

MAR 10 2014

CUSTOMER CLAIMS

DISABILITY RECOMMENDATION TO SCRS

MCB\232
O49890

Claim Level IN	Claim Type SCRS	Filing Date 12/16/13		SSN		
		S/A Receipt Date 01/21/14		Date of Birth 06/10/70		
Address of Originating Office S C RETIREMENT SYSTEM P O BOX 11960 CAPITOL STATION COLUMBIA SC 29211				Name and Address of Claimant TERRY H CAPONE 4209 WOODRIDGE DR COLUMBIA SC 29203		
Claimant Disabled		B. Onset		C. Diary		
A. ALLOWED		Disability Began 10/21/13		Type MRN		
		Disability Ceased		Mo/Yr 3/2017 2/2017		
Claimant Not Disabled						
A.	Primary Diagnosis	Code 12	Body Sys 3000	Secondary Diagnosis	Code 12	Body Sys 2960
	Anxiety Related Disorders			Affective/Mood Disorders		
B. Disability Ceased	Basis Code BC		Reason MED/VOC PREVENTS JOB DUTIES			
VR Action	A. Screen In		B. Screen Out	X	C. Prev. Ref.	

Remarks



Mitchell J. Cribb, Disability Examiner

Date: 03/06/14

SCRS Action Date: 3/10/14

Disability Approved as Recommended

Disability Disapproved as Recommended

Other Action Disapproved
w/COB date 3/1/17

SCR99 (7/05)

RECEIVED

MAR 10 2014

CUSTOMER CLAIMS

EXHIBIT

#8



**COLUMBIA FIRE
DEPARTMENT**

Aubrey Jenkins
Fire Chief

Harry Tinsley
Deputy Chief

Michael Edmonds
*Assistant Chief of
Administration*

Albert k. Owusu
OH&S Chief

**CONTACT
INFORMATION**

Occupational Health &
Safety Division
Phone: 803-545-0223
Fax: 803-545-4063



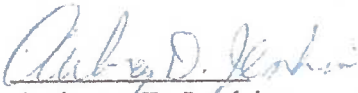
Occupational Health &
Safety Division
Columbia Fire Department
1800 Laurel Street
Columbia, South Carolina
29201
www.columbiasc.net/fire

October 20, 2014

TO WHOM IT MAY CONCERN

This letter is to notify you that Terry Capone is a former member of the Columbia Fire Department. On March 29, 2014, Mr. Capone retired on medical disability due to Post Traumatic Stress Disorder.

Sincerely,


Aubrey D. Jenkins,
Fire Chief



**COLUMBIA FIRE
DEPARTMENT**

Aubrey Jenkins
Fire Chief

Harry Tinsley
Deputy Chief

Michael Edmonds
*Assistant Chief of
Administration*

Albert k. Owusu
OH&S Chief

**CONTACT
INFORMATION**

Occupational Health &
Safety Division
Phone: 803-545-0223
Fax: 803-545-4063



Occupational Health &
Safety Division
Columbia Fire Department
1800 Laurel Street
Columbia, South Carolina
29201
www.columbiasc.net/fire

September 10th, 2014

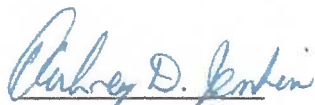
TO WHOM IT MAY CONCERN

This letter is to notify you that Terry Capone is a former member of the Columbia Fire Department who retired on medical disability due to Post Traumatic Stress Disorder from the City of Columbia Fire Department on March 29, 2014

Due to his disability, Terri Capone's children are entitled to benefits for college education as stated in SC Code § 59-111-110 (2013). The children are named below:

Rahem L Batts
Tarnisa T Capone
Ebony T Capone

Sincerely,


Aubrey Jenkins,
Fire Chief

EXHIBIT

#9



2601 Read Street, Suite I-7
Columbia, SC 29204
Phone 803-256-0101 or Fax 800-854-3497

April 30, 2019

Dear Sir or Madam,

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Before me this day personally appeared TIONA PRAYLOW, being duly sworn, deposes and says:

I am writing to outline the clinical imperatives warranting a full and unequivocal waiver of the statute of limitations in Mr. Terry Capone's claim for Post-Traumatic Stress Disorder, an occupational injury incurred during his service in the City of Columbia fire battalion. Mr. Capone has been under my care since 2013. At the initial period of time traditionally allotted to file claims (9/15/2015-9/15/2016), it is my professional assessment to a reasonable degree of medical certainty that Mr. Capone was of an "unsound mind," and unable to execute the imperative procedures.

Per judicial and statutory definitions, an individual is determined to be of "unsound mind" based on at least the following conditions: 1) "His mind is so weak and feeble . . . that he is incapable of understanding and acting in the ordinary affairs of life" 2) Delusions existⁱ During the time period in question, Mr. Capone experienced both an incapacity to understand and to act in ordinary life affairs.

A comprehensive body of scientific literature documents a persistent linkage between cognitive impairment and Post-Traumatic Stress Disorder. In *Traumatic stress: effects on the brain*, Bremner MD concludes "brain areas implicated in the stress response include the amygdala, hippocampus, and prefrontal cortex. Traumatic stress can be associated with lasting changes in these brain areas."ⁱⁱ Further detailing these deficits, Qureshi et al explicate, based on over 35 neuropsychological instruments, deficits in attention, learning, executive function, and memory.ⁱⁱⁱ In a 2016 evaluation of World Trade Center published in the *Alzheimers Dementia* journal responders experiencing PTSD symptoms, scientists concluded that re-experiencing symptoms of PTSD were consistently associated with cognitive impairment (CI).^{iv}

During the time of treatment, Mr. Capone experienced extreme executive function and cognitive impairment as well as emotional dysregulation. These symptoms are neurobiologically driven by neurochemical and structural cerebral insults incurred as a result of traumatic stress. He reported



2601 Read Street, Suite I-7
Columbia, SC 29204
Phone 803-256-0101 or Fax 800-854-3497

ongoing difficulties sleeping. He noted episodes of severe mood lability and perseverative thought patterns that impaired his ability to organize, plan, execute, or participate in many of his functional activities of daily living. These PTSD symptoms evidence his incapacity to act in the ordinary affairs of life.

Mr. Capone's wife outlines paranoia as a critical symptom she observed and this is corroborated by client's own self-report during his treatment. He reported homicidal ideations triggered by the persistent recurrence of paranoid ideations. This delusional thought process evidences the existence of delusions.

Based on scientific evidence describing neurobiological deterioration, resultant cognitive impairments present in PTSD survivors, as well as the subjective and objective observations of these symptoms in my client, I attest to a reasonable degree of medical certainty that Mr. Capone was of "unsound mind." Therefore, he was unable to organize and execute tasks essential to the affairs of his daily life. Moreover, his mental incapacity impaired him from appropriately participating in the claims process. It is imperative that my client be allowed to exercise his legal rights and seek warranted, deserving compensation for occupational disease incurred as a direct result of his valiant service to our community.

I certify under penalty of perjury that the forgoing statement is true and correct to the best of my knowledge and belief.

Tiona Praylow
Tiona Praylow, MD

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Sworn and subscribed before me this 8th day of May 2019, by Tiona Praylow. Identification Produced:
South Carolina Drivers License# 007910777 Expires: 04/14/2023



TARNISA CAPONE
Notary Public-State of South Carolina
My Commission Expires
June 22, 2027

PRINT OR STAMP NAME OF NOTARY

Tiona Praylow



2601 Read Street, Suite I-7
Columbia, SC 29204
Phone 803-256-0101 or Fax 800-854-3497

ⁱ Editorial Staff of the National Reporter System (1905). *Judicial and Statutory Definitions of Words and Phrases*, Volume 8. P 7215

ⁱⁱ Bremner, Douglas, MD. (2006). Traumatic stress: effects on the brain. *Dialogues Clinical Neuroscience*. 8(4): 445-461.

ⁱⁱⁱ Quershi et al (2011). Does PTSD Impair Cognition Beyond the Effect of Trauma? *J Neuropsychiatry Clin Neurosci* 23:1(16-28)

^{iv} Clouston et al (2016) Cognitive impairment among World Trade Center responders: Long-term implications of re-experiencing the 9/11 terrorist attacks. *Alzheimers Dementia* 4: 67-75

EXHIBIT

#10

220 Stoneridge Drive Suite 302
Columbia, South Carolina 29210

Phone: 803-779-2777
Fax: 803-779-5775

May 14, 2019

Re: SWORN AFFIDAVIT SHERYL MIMS WILLIAMS
Terry Capone: May 18, 2015 Altered Medical Health Opinion

To whom it may concern:

STATE OF SOUTH CAROLINA §

COUNTY OF RICHLAND §

Before me this day personally appeared SHERYL MIMS WILLIAMS who, being duly sworn, deposes and says:


Mr. Capone has been in treatment with our services since 08/31/2012. I am the Mental Health Counselor for Terry Capone. In my capacity as a Licensed Professional Counselor, Mr. Capone was diagnosed with Post Traumatic Stress Disorder an occupational disease, Anxiety and Major Depression that was directly connected to and exacerbated by his employment with the City of Columbia Fire Department.

According to our records May 18, 2015, I composed a letter for Mr. Capone for reconsideration to The Department of Veterans Affairs, and according to Mr. Capone, he subsequently submitted this same letter for consideration in his South Carolina Workers Compensation Claim. The diagnoses of PTSD, which is an occupation disease, Anxiety and Major Depression have always resulted from and has been connected to his employment with the City of Columbia Fire Department. According to Mr. Capone the Decision and Order dated December 2, 2015 by a Commissioner McCaskill, was altered due to the letter that was written to the VA.

Dr. Nicholas Lind, PsyD, Dr. Tiona Praylow, MD as well as I, diagnosed Mr. Capone with PTSD which was aggravated by events he experienced as a firefighter and/or trauma in the workplace. According to my notes there are at least 2 incidents that Mr. Capone refers to as being very traumatic while working as a firefighter.

If you have any questions please feel free to call me at the above number.

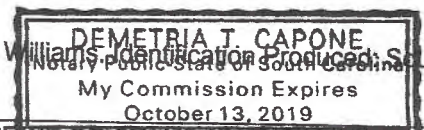
I certify under penalty of perjury that the forgoing statement is true and correct to the best of my knowledge and belief.



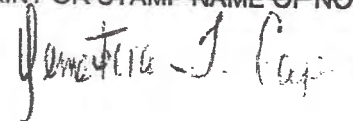
Sheryl Mims Williams, MS, MAR, LPCS

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Sworn and subscribed before me this 14 day of May 2019, by Sheryl Mims Williams
Carolina Drivers License# 20434881 Expires: 3/30/2025



PRINT OR STAMP NAME OF NOTARY



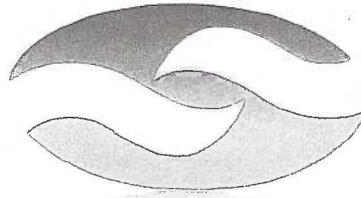


EXHIBIT

#11

Post Trauma Resources

"Solutions for Life's Toughest Problems"



3 April 2015

Dr. Tiona Praylow
Envision Wellness Medial Group
2601 Read St, Suite I-7
Columbia, SC 29204

Thank you for allowing me to meet with Mr. Capone and conduct a psychological evaluation. I had a chance to interview him today and review his medical records.

Symptoms/Impairments

Mr. Capone reported that, in or around 26 June 1989, he was involved in a motor vehicle accident when he was riding as a passenger with another marine. "He drove into a tree when we were in North Carolina," he said, "I just remember a woman running up and looking at me," he said, "she said, 'Look at his face!' When I looked in the mirror and saw how bloody I was I thought, 'I'm going to die!'" He was diagnosed with post concussive disorder and he continues to experience symptoms of posttraumatic stress associated with injury. On 30 July 1993, he assaulted a man who was having an affair with Mr. Capone's wife. The response was violent and excessive, resulting in Mr. Capone's 11 month confinement in the brig and ultimate bad conduct discharge. Mr. Capone believed both then and now that his reaction was mitigated by his TBI and PTSD. He acknowledges that his actions were hostile and harmful in a manner that deviates sharply from the social norms. His service records do not reflect deliberate or intentional disregard for consequences. In fact, the preponderance of the data reflects "otherwise honest, faithful and meritorious" service (38 C.F.R.3.3.1(n)). He earned outstanding IRAM Standard of conduct marks (between 4.9 and 5.0). At the time of the incident leading to his discharge, he had completed the Meritorious Sergeant board and earned the MALS-11 NCO of the Quarter by unanimous decision. He spent four months in solitary confinement, in which he was placed in uncomfortable positions for long periods of time. He suffered knee damage as a result, he said, and continues to experience knee pain at the average intensity of five out of 10.

Mr. Capone reported having repeated nightmares of the accident and/or other military experiences at least once a week. He experiences frequent intrusive recollections of what he went through in jail and, after having such dreams and thoughts, feels as if the events are again occurring.

www.posttrauma.com

1709 Laurel Street Columbia SC 29201
(803) 765-0700 (800) 459-6780 Fax (803) 765-1607



As for avoidance symptoms, Mr. Capone reported that he actively avoids any type of confrontations. Negative thoughts and mood symptoms include a decreased interest in previously enjoyed activities, such as drawing and socializing. He noted feeling detached from others and described that, in general, he experiences overwhelming feelings of anger.

In terms of arousal symptoms, he reported sleeping approximately four hours each night, a reduction from the eight hours he experienced prior to his military service. He said he has noticed increased irritability and difficulty concentrating. Other symptoms include feelings of guilt and a noted loss of energy, decreased appetite and a loss of sex drive. His PTSD were aggravated in 2013 when, as a firefighter, he responded to a traumatic call, which ultimately resulted in his retirement.

He denied having current suicidal thoughts. His last thought was approximately one year ago, in which he fantasized about driving off the road. Current risk factors for suicide include his reported symptoms of anxiety and potential impulsivity secondary to TBI. Protective factors include his willingness to seek help and his family. Based on Rudd et al's 2001 criteria for determining suicide risk, Mr. Capone is currently at No Risk for self-harm. The corresponding level of appropriate health care is outpatient therapy with recurrent risk assessment.

Mental Status

Mr. Capone appears stated age. Regarding level of consciousness, he appeared confused. Affect is flat. Reported mood is "agitated." He presented himself in a casually dressed and appropriate fashion. Eye contact can be described as good. His speech is tangential. Recent memory appears poor. Remote memory is poor. Psychomotor activity is normal. There is a negligible degree of conceptual disorganization evident. His thought content is characterized by no significant preoccupations. Regarding perceptual functioning, the examinee denies hallucinations and none are evident. Attitude can be described as cooperative. Insight and judgment appear poor. Concentration difficulty was noted in the interview. Regarding impulse control Mr. Capone demonstrated ability to resist urges.

Quality of Historian. The quality of Mr. Capone's self-reporting of symptoms appeared consistent with his presentation, records and testing.

Results of Psychological Testing

Mr. Capone articulated understanding of each instrument. His responses were consistent within and among measures and were determined to be valid reflections of his current functioning.

Personality. On the MMPI-2-RF, Mr. Capone endorsed a number of items that are infrequently answered by the normative sample ($F-r=100$). This response style is suggestive of overreporting of symptoms but may also be generated by individuals with genuine difficulties. Because even in non-compensation seeking settings people with PTSD are likely to report significantly higher subjective distress than people without PTSD, the authors of the VA's *Best Practice Manual for Posttraumatic Stress Disorder Compensation and Pension Examinations* (Watson et. al, 2002) suggest that the

Infrequency-Psychopathology Scale (F_p) be considered (this is now the " F_{p-r} " scale in the *Restructured* version of the MMPI-2). Citing Aribisi and Pen-Porath (1998), they suggest that when the F_p scale is elevated along with F , the clinician can more confidently attribute the high scores to be due to the overreporting of psychopathology, but only if the other validity scales are not also elevated significantly. While the F scale consists of items rarely endorsed by individuals from the normal population, the F_p contains items rarely endorsed by individuals within the clinical population. The F_{p-r} scale is within normal limits ($F_{p-r}=51$) and suggests that Mr. Capone's endorsement of emotional distress is legitimate. Individuals with profiles similar to Mr. Capone's have been found to be experiencing emotional distress likely to be perceived as a crisis. They report somatic complaints involving different body systems and display vegetative symptoms consistent with depression.

Mood/Emotional Symptoms. Mr. Capone was administered the Beck Depression Inventory-Second Edition, a 21-item self-report questionnaire assessing depressive symptoms in the time frame of the "past two weeks including today." Scores range from Minimal, Mild, Moderate to Severe levels of depressive symptoms. There is no validity measure. Compared to the normal population, he reported experiencing Severe levels of depression ($BDI-II=48$).

The examinee was administered the Beck Anxiety Inventory, a 21-item scale which measures the severity of anxiety in the time frame of the "past two weeks including today." Scores range from Minimal, Mild, Moderate to Severe levels of anxiety symptoms. There is no validity measure. Compared to an outpatient psychiatric population, he reported experiencing Severe levels of anxiety ($BAI=37$).

Mr. Capone was administered the Detailed Assessment of Posttraumatic Stress, a measure of the impact of potentially traumatic events. The resulting profile was determined to be valid and consistent with the diagnosis of Posttraumatic Stress Disorder. His scores were especially significant in the areas of general distress, re-experiencing the perceived traumas, avoidance of people and situations associated with the events and increased arousal. Mr. Capone reported significant emotional distress at the time of the traumas and endorsed the tendency to disassociate during traumatic events, a propensity associated with more severe posttraumatic symptoms (Koopman, Classen and Spiegel, 1996) and which may explain his reported increase in impairment.

The P3 is designed to identify pain patients who are experiencing emotional distress that may be affecting their symptoms and their response to treatment. The results suggest that Mr. Capone approached the test items in an open and honest manner. The profile suggests that he is experiencing more depression, anxiety, and somatization than the typical pain patient.

DSM-5 Diagnoses

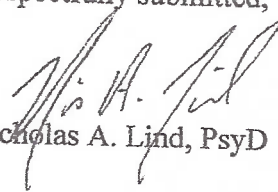
309.81 Post Traumatic Stress Disorder, aggravated by chronic pain

Conclusion and Responses to Specific Questions

Mr. Capone's current symptoms of anxiety and depression are consistent with the diagnosis of PTSD as well as Adjustment Disorder secondary to pain. In my opinion these symptoms are as likely as not associated with stressors experienced while on active duty. He is likely to experience ongoing symptoms in times of stress since PTSD has been shown to be influenced by the trauma itself as well as current psychosocial stressors, to include pain. I recommend combined psychological/psychiatric care to help normalize his sleep and mood. He would also benefit from physical therapy and pain management.

In my opinion, he was insane at the time of the 26 June 1989 incident that ultimately resulted in his discharge. His behavior was hostile and harmful to others and deviated sharply from societal norms. It was out of character for him, however, and his service records do not reflect deliberate or intentional disregard for consequences. In my opinion, his actions were more likely than not mitigated by his TBI and PTSD, which resulted in a prolonged deviation from his normal method of behavior.

Respectfully submitted,



Nicholas A. Lind, PsyD

References

- Arbisi, P.A. & Ben-Porath, Y.S. (1998). The ability of MMPI-2 validity scales to detect fake-bad responses in psychiatric inpatients. *Psychological Assessment, 10*, 221-228.
- Watson, P., McFall, M. E., McBrine, C., Schnurr, P., Friedman, M., & Keane, T. (2002). Department of Veterans Affairs Best Practice Manual for Post-Traumatic Stress Disorder (PTSD) Compensation and Pension Examinations.

EXHIBIT

#12

SWORN AFFIDAVIT OF DEMETRIA T CAPONE (WIFE)

April 10, 2019

Mrs. Demetria T Capone
4209 Woodridge Drive
Columbia, SC 29203
(803) 312-1042

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

Re: Letter in Support of Fire Battalion Chief Terry H Capone, Disability Retired. Tolling of the statute of limitations: disability and unsound mind

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

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Before me this day personally appeared DEMETRIA T CAPONE who, being duly sworn, deposes and says:

- I. My name is Demetria T Capone, DOB September 9, 1970, SSN XXX-XX-6973, I am of sound mind and fully competent to make this sworn declaration. I have been married to my husband Terry H Capone over 21 years and have reviewed his military medical, personnel and civilian medical records and multiple South Carolina Workers Compensation files and various other records and have personal knowledge of the matters set forth below.
- II. My husband was under legal disability and of unsound mind during the period of 9/15/2015- 9/16/2016, as a result of the Marines and Fire Service through occupational exposures and effects thereof, has been diagnosed with PTSD an occupational disease, dementia due to metabolic causes(new), anxiety, depression (major), mild neurocognitive disorder, irritable bowel syndrome- diarrhea, insomnia, sleep apnea, migraine headaches, type II diabetes, Hypertension and others was unable to pursue legal recourse in the South Carolina Workers Compensation appeals process, and disassociated himself from it until a time in 2017, the statute of limitations should be tolled as noted in SC Code§ 15-3-40 (2013)

Exceptions as to persons under disability. In addition he was also impaired by the adverse effects of his medications that include Ambien 10 mg, Seroguel 300 mg, Ativan 1 mg, Depakote 500 mg, Prozac 20 mg, Relpax 40 mg, Dexilant 60 mg still prescribed today, along with others. Both Ambien and Ativan have known side effects that impair cognition, memory (amnesia) and should have been considered by the Commission during the August 21, 2015 hearing in regards to Ativan, which my husband had taken just prior to the start of the hearing for anxiety. See, Claimants 2015 APA's p.#590-620

- III. As a practicing nurse (RN) of over 16 years, I began to recognize mental and cognitive changes in my husband, as well as behavioral inconsistencies that included suicidal, homicidal ideation and paranoia. His sleep pattern were erratic with him staying up at times 24 hours for days ruminating, stuck and rehearsing the past. When he did sleep it was merely 4-6 hours and included nightmares. The impact of the disorders and medications led to him being irritable, over-reactive, having continued memory impairment, a lack of self care (haircuts, shaving and hygiene), and angry verbal outburst, led to an excessive strain on our family and marriage. He also requires the use of a CPAP (sleep apnea) machine due to him having periods of not breathing when he does sleep, but he feels the mask is smothering.
- IV. His psychological, physical and impairments due to the adverse effects of multiple medications continue to change his normal methods of behavior and during the period made him incapable of managing affairs of life, requiring him to see his counselor and psychiatrist on a weekly basis, he was no longer able to manage the home and finances, being an active husband, father to his children, interacting with family, friends and in marital activities. In addition my husband's affairs in life as a Fire Battalion Chief also included those of the City of Columbia Fire Department, in managing emergency scenes, that included: life safety, incident stabilization, and property conservation. This included managing multiple Fire Stations, personnel and pieces of equipment; pursuing his graduate degree and other educational courses that required travel to multiple states for self development throughout the course of his career. Also at a time included handling the nations affairs as a U.S. Marine, until he was made unfit for duty, on two separate occasions confined because of his in ability to control his behavior, and subsequently discharged from service as a result; today he continues to remain under legal disability.
- V. I also observed the symptoms of diabetes at home prior to his diagnosis. He was having excessive trips to the bathroom, as well as an acetone smell to his breath. I encouraged him to seek medical help, as his wife, and as a nurse. He has frequent bowel movements

(6-8 times) after he eats, and this has also impeded him wanting or being able to accompany me in public. His diagnoses were confirmed.

VI. Based on the medical documentation and definitions, my husband Terry Capone, who is a disability retired Fire Battalion Chief and Marine Veteran is legally disabled, and his military medical records show a long history of suffering from episodic periods and fluctuating levels of an unsound mind that began in 1989, was determined to be unfit for full duty until 1992 in the military and subsequent ended his career in the Fire Service.

VII. In April 3, 2015, Dr. Nicholas A. Lind, provided a medical opinion, That stated: "His PTSD were aggravated in 2013 when as a firefighter, he responded to a traumatic call, which ultimately resulted in his retirement"... "In my opinion, he was insane at the time of the 26 June 1989, incident that resulted in his discharge" see, post trauma resources see claimants 12/2015 Book 1 of 2 APA's Pre-hearing brief- "Alleged aggravation of PTSD" p.#14, Pages 13-15 and p.#38, Pages 37-41.

VIII. On, September 12, 2016, Social Security Administrative Office of Disability Adjudication and Review excerpts:

3. "The claimant has the following severe impairments: Irritable Bowel Syndrome, and mental impairments variously diagnosed as Post-traumatic Stress Disorder, depression, and anxiety (20 CFR 404.1520 (c)). Page 3-8.

The claimant's impairments are considered severe because, they are medically determinable impairments that, when considered either individually or in unison, significantly limit the claimant's mental and physical abilities to do one or more basic work activities. In addition, the claimant's impairments have persisted at a severe level for a continuous period of more than 12 months." Page 3-8.

11. "The claimant has been under a disability as defined in the Social Security Act since October 21, 2013, the alleged onset date of disability (20 CFR 404.1520(g))." Page 8-8.

Decision: "Based on the application for a period of disability and disability insurance benefits filed on December 26, 2013, the claimant has been disabled under section 216(i) and 223(d) of the Social Security Act since October 21, 2013, the alleged onset date of disability (20CFR 404.1520(g))." Page 8-8.

IX. On August 2, 2017, Dr. Conigliaro Jones, my husband primary care physician wrote a letter explaining the adverse effects due to medication prescribed in 2014 named Elavil (Amitriptyline), noting "it works by affecting the balance of certain natural chemicals [neurotransmitters such

as serotonin) in the brain, this medication was also prescribed to him in service. The Food and Drug Administration (FDA), reported among other adverse events physical assault, sudden and usual changes in behavior, altered sugar levels and others experienced by my husband and observed at home by myself and other family members and he was later diagnosed with Type II Diabetes.

X. On November 21, 2017, Dr. Tiona Praylow diagnosed my husband with "post traumatic stress disorder an occupational disease, arising from prolonged work-related stress that was ongoing and caused him to deviate from his normal method of behavior"... "The neurobiology of post traumatic stress disorder explains Mr. Capone's exposure to traumatic and critical incidents, or stressors beyond the range of the normal human experience resulted in [neurochemical alterations in multiple neurotransmitter systems]"..."PTSD appears to be associated with a significant disturbance of multiple neurobiological systems"... "may represent a multi system disorder". Dr. Praylow has been the psychiatrist treating my husband since November 7, 2013 for ptsd, anxiety, insomnia, depression and he has chronic pain and IBS-D, a referral for testing 3/2015 confirmed neurocognitive impairment and Dr. Praylow stated he was insane during the events that lead to his discharge while serving in the Marines. See, Envision Wellness Medical Group Mental Health Opinion.

XI. As of March 11, 2019, the US Veterans Administration determined February 26, 2019 a rating decision which deemed my husband was insane at the during the time of the circumstances surrounding his discharge and changed is his character of discharge to "Honorable" for VA purposes and made him eligible for benefits that include health care.

XII. On March 20, 2019, the Department of Veterans Administration provided my husband with a compensation and pension exam, where a VA Doctor determined my husband's PTSD was due to his service in the Marines and Fire Service and a TBI that was related the Marines; a rating is pending.

XIII. On April 5, 2019, the Department of Veterans provided my husband with another compensation and pension exam, where it was recommended his Headaches receive a disability rating of 50% and Unemployable 100% with Sciatic nerve 10% rating and both were due to injury during his service in the Marine; a final rating is pending.

XIV. My husband continues to suffer and remains under disability. His March 20, 2019 blood work noted a vitamin D deficiency at 18.9 of minimum of 30 and others noted and since been diagnosed by Dr. Jones, with dementia associated with another disease: metabolic associated.

XV. I also had the opportunity to review the South Carolina Worker's Compensation Commission correspondence, transcripts and their decisions in my husband's, most recently Appellant Panel Decision and Order dated March 1, 2019. I disagree at page 4 #4 "I find no medical evidence to suggest that the Claimant had a then existing mental condition which prohibited him from filing a timely appeal". I find the statement to be untrue, not based on information in the record, now or as they existed during the time for filing of appeal based on December 2, 2015 Decision and Order, and the commission is aware of that my husband's PTSD is an occupational disease, and all the other diagnosis, medications and adverse side effects that is before it.

XVI. Definitions

Suggest:

1 a Obsolete: to seek to influence: SEDUCE
b: to call forth: EVOKE
c: to mention or imply as a possibility
d: to propose as desirable or fitting *suggest* a stroll
e: to offer for consideration or as a hypothesis *suggest* a solution to a problem

2 a: to call to mind by association
B: to serve as a motive or inspiration

suggest [Def.1 and 2]. (n.d.). In Merriam Webster Online, Retrieved March 20, 2019, from <https://www.merriam-webster.com/dictionary/suggest>

Section 15-3-40 (Supp. 2013) Exceptions as to persons under disability.

states:

If a person entitled to bring an action mentioned in Article 5 of this chapter or an action under Chapter 78 of this title, except for a penalty or forfeiture or against a sheriff or other officer for an escape, is at the time the cause of action accrued either:

- (1) within the age of eighteen years; or
- (2) insane;

the time of the disability is not a part of the time limited for the commencement of the action, except that the period within which the action must be brought cannot be extended:

- (a) more than five years by any such disability, except infancy; nor
- (b) in any case longer than one year after the disability ceases.



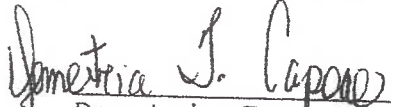
Disability. The want of legal capability to perform an act. Term is generally used to indicate an incapacity for the full enjoyment of ordinary legal rights; thus, persons under age, insane persons, and convicts are said to be under disability. Sometimes the term is used in a more limited sense, as when it signifies an impediment to marriage, or the restraints placed upon clergymen by reason of their spiritual avocations, or lack of legal qualifications to hold office.

As used in connection with Workers' Compensation Acts, disability is a composite of (1) actual incapacity to perform the tasks usually encountered in one's employment and the wage loss resulting there from, and (2) physical impairment of the body that may or may not be incapacitating. Russell v. Bankers Life Co., 46 Cal.App.3d 405, 120 Cal.Rptr. 627,633. Black's Law Dictionary 415(5th ed. 1979).

Unsound mind. Non-legal term referring to one who from infirmity of mind is incapable of managing himself or his affairs. The term, therefore, includes insane persons (see Insanity). It exists where there is an essential privation of the reasoning faculties, or where a person is incapable of understanding and acting with discretion in the ordinary affairs of life. Oklahoma Natural Gas Corporation v. Lay, 175 Oklo 75, 51 P.2d 580, 582. Black's Law Dictionary 1380(5th ed. 1979).

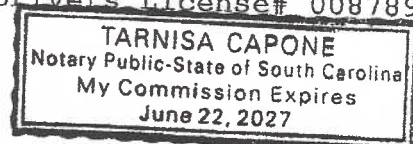
Mental incapacity; mental incompetency. Such is established when there is found to exist an essential privation of reasoning faculties, or when a person is incapable of understanding and acting with discretion in the ordinary affairs of life. Black's Law Dictionary 889 (5th ed. 1979)

I certify under penalty of perjury that the Forgoing statement is true and correct to the best of my knowledge and belief.


Demetria T Capone

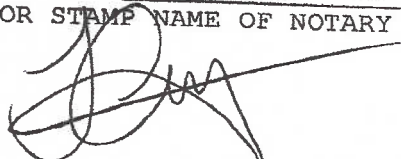
STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Sworn and subscribed before me this 10th day of April 2019, by Demetria T. Capone. Identification Produced: South Carolina Drivers License# 008789079 Expires 09-04-2026



PRINT OR STAMP NAME OF NOTARY





THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

Mar 25 2021

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
APPELLATE PANEL

SC Court of Appeals

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

Terry Capone, Appellant,

v.

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

PROOF OF SERVICE

I certify this 12th day of March 25, 2021 that I have served copies of the

APPELLANT'S PETITION /MOTION TO REINSTATE APPEAL

mailing same, postage prepaid in the United States mail, addressed to the following:

Cynthia C Dooley Attorney
Camelo B Sammataro Attorney
Turner Padgett Graham & Laney
P.O. Box 1473
Columbia, SC 29202

ATTORNEYS FOR RESPONDENTS

(Signature page to follow.)

March 25, 2021

A handwritten signature in black ink, appearing to read 'T. Capone', with a long horizontal flourish extending to the right.

By: Mr. Terry H Capone
Fire Battalion Chief-Rtired
1 Arsenal Hill Court
Columbia, SC 29201
tcapone@liberty.edu

PRO PER APPELLANT



RECEIVED

Mar 25 2021

SC Court of Appeals

March 25, 2021

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# 1505 the amount of \$50.00 for (1) Motions:

1. The Appellant's Notice of Petition/ Motion to Reinstate Appeal

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
1 Arsenal Hill Court
Columbia, SC 29201
803.622.6578
Email: tcapone@liberty.edu