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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION APPELLATE PANEL

R. Michael Campbell, III, Commissioner

Appellate Case No. 2020-000481
W.C.C. File No. 1205924

Opinion No. 5703
Heard April 1, 2019 – Filed December 31, 2019

David B. Lemon, Employee/Claimant,.....Respondent,

v.

Mt. Pleasant Waterworks, Employer, and State Accident Fund, Carrier,.....Petitioners.

**MEMORANDUM IN SUPPORT OF
MOTION FOR LEAVE TO
SUPPLEMENT THE RECORD ON APPEAL**

Pursuant to Rule 212, S.C.A.C.R., the Petitioners respectfully move for leave of Court to supplement the Record on Appeal with a portion of the transcript from the September 11, 2014 hearing before the Workers' Compensation Commission, specifically pages 4–6. Under Rule 212(b), a party desiring to supplement the Record on Appeal must move the appellate court for leave to do so. Counsel for the Petitioners requests such leave at this time because counsel has only now learned that the transcript of the September 11, 2014 hearing was, in fact, preserved, though not initially included in the Record on Appeal by prior counsel.

In addition, the appellate court may, on its own accord, require copies of any part of the transcript of the proceedings before the Workers' Compensation Commission "to be sent up for its inspection and consideration." *See* Rule 212(a), S.C.A.C.R. The Petitioners respectfully contend that the Supreme Court should exercise this discretionary authority to inspect and consider pages 4–6 of the transcript of the September 11, 2014 hearing before the Workers' Compensation Commission because it not only has direct bearing on, but is dispositive of, one of the issues currently before the Court.

The portion of the September 11, 2014 hearing transcript that the Petitioners have proposed for inclusion in the Record on Appeal pertain to arguments raised by the Petitioners in their Brief at pages 3 and 4. Specifically, the Petitioners argue that the Court of Appeals erred as a matter of law in failing to conclude that the Respondent is bound by his prior stipulation that Petitioners are entitled to a credit for temporary total disability benefits paid in a prior back injury claim. In the Respondent's Brief at page 8, the Respondent argues that he "did not stipulate the Petitioners were entitled to a credit for his prior back claim."

However, the portions of the September 11, 2014 hearing transcript that the Petitioners ask the Court to consider contains the following statement made by counsel for the Petitioner on the record to the Hearing Commissioner:

"The only reason we're stipulating to the 22-plus weeks of temporary total disability as a credit is because that was for a prior back injury claim and the Form 19 specifically delineated the 22-plus weeks for temporary total


disability so we concede that under *Midland*¹ [sic] since the injury was to the same body party [sic].” (Hearing Transcript p.5, lines 17–24).

While the Respondent’s stipulation in this regard is reflected in the Hearing Commissioner’s Order (A. p.4), it is more particularly stated by his own attorney in the actual hearing transcript at pages 4–6.

The Petitioners respectfully contend that pages 4–6 of the transcript of the September 11, 2014 hearing are crucial to the Court’s understanding and just disposition of the question of whether the Respondent actually stipulated that the Petitioners are entitled to a credit for temporary total disability benefits paid as a result of a prior accident and whether the Court of Appeals erred as a matter of law in failing to conclude that the Respondent is bound by this stipulation. It is for these reasons that the Petitioners now move for leave to supplement the Record on Appeals and to include pages 4–6 of the September 11, 2014 hearing transcript in the Appendix as pages 227, 228, and 229.

Respectfully submitted,

Mount Pleasant, SC
May 4, 2021


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¹ This is an apparent reference to Medlin v. City of Greenville, 303 S.C. 484, 401 S.E.2d 667 (1991).