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**Jul 16 2020**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM THE SOUTH CAROLINA WORKERS  
COMPENSATION COMMISSION

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**May 13 2021**

**SC Court of Appeals**

T. Scott Beck, Commissioner

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Appellate Case No. 2019-001361

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Courtney Ray Mitchell, Employee,

Appellant,

v.

United Parcel Service, Employer,  
and Liberty Mutual, Carrier,

Respondents.

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**APPELLANT'S FINAL BRIEF**

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July 10, 2020.

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## **STATEMENT OF ISSUES ON APPEAL**

### **I. WHETHER OR NOT THE COMMISSION ERRED IN DENYING APPELLANT'S MOTION TO REINSTATE APPEAL TO THE COMMISSION FOR BELATED FILING?**

#### **STATEMENT OF FACTS**

Prior to working at UPS, Appellant had been employed at South Carolina Department of Corrections, as correctional officer, and at the Department of Probation and Parole. Appellant claimed he has worked for the Harris, Ragan and Paterson law firm and the American Security at Easley Baptist Hospital.

Appellant had bouts with PTSD which necessitated medical intervention. From July 17 to September 13, 2006, Appellant was involuntary committed to Patrick B. Harris Mental Health Hospital and was diagnosed with bipolar and PTSD. (R, p. 124, lines 7-17). After his release from Patrick B. Harris, Appellant was required to seek outpatient treatment from Abbeville Mental Health Center. (R, p. 124, lines 13-18). After completion of the one-year program at Abbeville Mental Health Center, Appellant was supposed to stay on medication. (R, p. 125, lines 19 -23). However, Appellant was not compliant with his medication treatment plan. (R, p. 126, lines 2-5). This led to another episode in 2009, while he was in Kentucky. His turbulent relationship with his girlfriend led to a charge of Criminal Domestic Violence. (R, p. 114, lines 23-25). He pled to terroristic threats, and thereafter allowed to leave Kentucky. He then returned to South Carolina to be with his cancer-stricken father.

When his father died, Appellant resolved to turn his life around and refocused himself to becoming stable. He married Susan Michelle, who bore him a son. He also found employment.

On March 30, 2012, he came to work for UPS. Appellant began as part of a training group and later on became an Inside Sale Representative (ISR). As an ISR, Appellant's duties

included calling customers within the territories assigned to him (hereinafter referred as “patch”) and accessing multiple computer programs which required sitting most of the day.

Sometime after, Appellant began having problems with his lower back and his hands. He believed that it was due to the fact that his job required him to sit most of the time. Appellant filed for short term disability due to his back pain and issues with his hands.

Despite these physical limitations, Appellant received commendations/awards as salesman of the month for June, July and August 2012. (R., p. 333). Sometime in August, his patch was changed; leaving him with only the Harrisburg area, having lost West Virginia and Metropolitan Pennsylvania.

Appellant took this hard. His numbers started to decline causing him stress and anxiety about his job. (R., p. 111, lines 3-16). Appellant noted that while working as ISR, he was evaluated by his coach Ms. Velma Jones. He believed that Ms. Jones and Mike Battista had something to do with him being stripped off his patch. Both Jones and Battista admitted giving Appellant negative reviews on his job performance.

Ms. Jones wrote a 2-page assessment letter stating that Appellant never got better in the employ of UPS. In her assessment, she wrote, “At the time I do not see the skills reflected on Ray to be able to maintain the rigors on an ISR position”. (R, p. 211).

Mr. Battista was asked how Appellant had progressed in a positive or negative manner from the time he started. It was his belief that he had regressed from an employment standpoint. He testified as follows:

16. I would say, down. He struggled
17. being on the phone; talking effectively to the
18. customers; understanding the products, and the
19. skill set, and the acumen.
20. He struggled with the systems; just
21. overall, was not comfortable with the job, and the

22. expectations themselves was just awful.

(R, p. 212).

At some point while in UPS employ, Appellant and other employees were requested to watch a video called “Shots Fired. Shots Fired was a teaching video used by UPS to help recognize potential shooters on the job. Appellant believed that the video was directed at him. His co-worker, Michael Leonard affirmed this belief in his testimony. Leonard admitted that Appellant had earned the nickname “Shots Fired”. (R., p. 287-288).

Cognizant of the difficulties he was facing in his position as an ISR, Appellant requested a transfer to a different position. His request was denied because of his poor performance He was told that since his numbers were not up to standard, he could not be transferred. (R., p. 116-117, lines 1-3). Respondents’ failure to respond positively with Appellant’s request for accommodation was in clear violation of the Americans with Disability Act (ADA). In essence, he had essentially requested to be demoted to a security position or local sales.

Ms. Jones and other members of the leadership team rode Appellant hard. Appellant recognized this fact but would not let anybody force him to relinquish his job. He requested to be moved to a different department due to his physical and mental limitations, but he was rebuffed. Eventually, UPS wore him down and his asymptomatic mental health issues overwhelmed him.

On June 21, 2013, Appellant, who was out of work on a short-term disability, met some of his co-workers for lunch. Appellant made some off-handed remarks, which were misinterpreted by the co-workers as threatening words. Ms. Jones reported the same to UPS Manager Ken Baca, who filed a complaint against Appellant. Without any investigation, a warrant for Breach of Peace of high and aggravated was immediately issued and Appellant was

ticketed a few hours after his lunch with his co-worker. Appellant was terminated thereafter. It should be noted that none of the co-workers told him they were offended by his manner of speaking.

Appellant who had been put on a no trespass, had to return a co-worker's leaf blower that he had in his possession. The same was not working and had to be repaired. Based on the no trespass issued by UPS, Petitioner had to return the leaf blower prematurely. So, on July 25, 2013, Appellant decided to send the leaf blower to Derrill Bailey, along with a partially torn envelope containing three cellphones, and a number of nondescript items. The messenger gave them to Mr. Bailey. He had been instructed to take the envelope to Ms. Jones. There was nothing within the envelope that was directed to Ms. Jones. He took his leaf blower to his vehicle. No explanation was provided with regard to the purpose of the contents of the envelope. But Ms. Jones interpreted the items as a threat to her. Unknown to the Appellant, Jones was to stand as a witness against him on the breach of peace charge. Appellant was arrested for intimidating a witness for which he was tried, convicted and sentenced to ten (10) years of imprisonment.

On December 23, 2014, Appellant filed a claim for injury to his psyche, back and arms. Appellant filed a Form 50 on April 12, 2017 and amended the same on February 2, 2018. Alleging that he has reached maximum medical improvement on the date of injury on June 21, 2013. Appellant asserts that working at UPS aggravated his mental condition because his supervisors were always criticizing him more than coaching (Ms. Jones) and treated him in a demeaning and sarcastic way (with regard to Mr. Baca). (R., p. 104-106). It did not help that his team could not understand his condition, and he had to endure the negative responses from

his team. He testified that he told his supervisors that his position was causing him difficulties and asked for a transfer, but his request was denied. (R., p. 116, line 16-25; p. 117, lines 1-3).

Appellant testified that since his job required him to sit down most of the day to talk on the telephone and access multiple programs on the computer, his back pains returned. He stated that while he experienced lower back pains while working at Staples, he did not start feeling terrible pain until the end stages of his career at UPS.

Appellant also claimed that he had been feeling pain in his hands, which he never experienced prior to working at UPS. Appellant admitted not reporting or filing any worker's compensation claim while working at UPS. Instead, he filed for and received short term disability relative to his back and hands. (R., p. 108, lines 16-22).

A hearing was held on October 27, 2017, before Single Commissioner T. Scott Beck. Commissioner Beck denied Appellant's claim in his Decision and Order, dated February 14, 2019.

On February 27, 2019, Appellant filed a Form 30, Request for Commission Review. The Commission issued a Form 31 Briefing Schedule and Notice of Appellate Hearing, setting May 12, 2019, as the due date for filing of Appellant's Brief.

On May 13, 2019, Appellant filed his Brief and served both the Commission and Respondents, by and through their counsel of record, via postal service.

Commissioner T. Scott Beck issued an Order dismissing Appellant's Request for Commission Review on May 23, 2019, for failure to timely file the appellant's brief. On June 10, 2019, Appellant filed a Motion to Vacate the Order of Dismissal and to Reinstate the Appeal. The Full Commission denied Appellant's motion on July 15, 2019. Thus, this appeal.

## ARGUMENTS

Respondents contend that this Appeal is improper because of Appellant's failure to file his Initial Brief on time. Respondents further allege that contrary to Plaintiff's claim, they did not receive a copy of Appellant's Brief.

Appellant's Brief was due on May 12, 2019, which is a Sunday. Rule 6 of the South Carolina Rules on Civil Procedure provides,

“In computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or a State or Federal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor such holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and holidays shall be excluded in the computation. A half-holiday shall be considered as other days and not as a holiday.”

Pursuant to the above-mentioned rule, Appellant has until the following working day, to file his Appellant's Brief to the Commission. Appellant filed his Brief on May 13, 2019, a Monday. He served Respondents via postal service. Since service is complete upon mailing pursuant to Rule 5(b) of the SCRCPP, Appellant avers that his Brief to the Commission was timely filed.

In addition to Rule 5(b) of the SCRCPP, S.C. Code Reg. 67-205(E) of the South Carolina Workers Compensation Act follows the same service duty protocol:

E. The following forms or documents are deemed filed on the date on the accompanying certificate of service properly addressed to the Commission: Forms 50, 51, 52, 53, 54, 55, 58, 30, and appellate briefs.

S.C. Code Reg. 67-205(E).

With regard to Respondents' claim that they were not served with the Appellant's Brief, the issue was not raised in the lower court/tribunal; and therefore, it was not preserved for this Court's review. State v. Langford, 400 S.C. 421, 735 S.E.2d 471 (SC, 2012).

In essence, Appellant is appealing the May 23, 2019 Administrative Order which dismissed Appellant's Request for Commission Review and the denial of the subsequent Motion to Vacate and Reinstate the Appeal because Appellant has timely filed his Brief to the Commission on May 12, 2019, pursuant to both SCRPC and S.C. Code Reg. 67-205(E).

### CONCLUSION

For the foregoing reasons, Appellant prays that the Administrative Order dated May 23, 2019, dismissing the Appellant's Request for Commission Review, and the Decision and Order, dated July 15, 2019, denying Appellant's Motion to Vacate and Reinstate the Case, be reversed and the case be remanded to SCWCC.

Anderson, SC  
July 10, 2020.

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**FORM 16**  
**CERTIFICATE OF COUNSEL FOR FINAL BRIEF**

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T. Scott Beck, Commissioner

Appellate Case No. 2019-001361

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United Parcel Service, Employer, and  
Liberty Mutual, Carrier,

Respondents.

**CERTIFICATE OF COUNSEL**

The undersigned certified that Appellant's Final Brief complies with Rule 211(b),  
SCACR.

Respectfully submitted by:

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Date: July 10, 2020.