

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
APPELLATE PANEL

Case No. 2013-000354

RECEIVED

APR 24 2013

SC COURT OF APPEALS

Frank Wilson,.....Appellant,

v.

American LaFrance,.....Employer,

and

AIG c/o
Gallagher Bassett Services, Inc.,..... Respondents.

REPLY MOTION

Pursuant to Rule 240 SCACR and Rule 10(c) SCACR, Respondents, American LaFrance, and Gallagher Bassett Services, Inc. hereby submit this Reply Motion in opposition to Appellant's Motion requesting additional records be made part of the record on appeal. This Court should deny Appellant's Motion on the grounds that: (1) the record on appeal shall not include matter which was not presented to the lower Court or tribunal, and (2) the medical evidence requested to be submitted into the record were obtained after the parties' hearing on the merits.

Appellant's Motion must be denied because the evidence he proposes to introduce before this Court does not meet the test of §1-23-380(3). That Section provides, in relevant part, that "if a timely application is made to the Court for leave to present additional evidence, and it is shown to the satisfaction of the Court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the agency, the Court may order that the additional evidence be taken before the agency upon conditions determined by the Court." S.C. Code Ann. §1-23-380(3). As an initial matter, Appellant is not requesting an Order from this Court to remand this matter to the S.C. Workers' Compensation Commission in order that the additional evidence be considered, but rather the Appellant is merely attempting to supplement the record on appeal with evidence not presented to the lower Court. Therefore, the Respondents contend Rule 210(c) governs this issue and the Court must preclude any additional evidence not presented to the lower Court.

Furthermore, Workers' Compensation Commission's Regulation 67-612(J) provides that "all available evidence and testimony shall be presented at the scheduled hearing or a party must move for an adjournment according to Regulation 67-613." S.C. Code Regulation §67-612(J). Claimant could have moved at the hearing before the single Commissioner to hold the record open for additional evidence if Claimant felt the need to supplement his testimony or the record in any way. Because Appellant has not represented any good reason why he should be allowed to supplement the record at this late date, his Motion should be denied.

Finally, the Standard of Appellate Review of a Commission Decision is governed by the Administrative Procedures Act (hereafter "the APA") in S.C. Code Ann. §1-23-380(A)(6)(a-f) *Gray v. Club Group, Ltd.*, 339 S.C. 173, 528 S.E. 2d 435 (Ct. App. 2000); *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 276 S.E. 2d 304 (1981). The reviewing Court may reverse or modify an agency

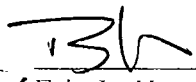
decision if substantial rights of the Appellant have been prejudiced because the administrative findings, conclusions, or decisions are affected by an error of law or clearly erroneous in review of the reliable, probative and substantial evidence on the record. As such, Appellant Courts role on appeal is not as fact finder, and may not consider new or additional evidence not presented to the lower Court.

For the aforementioned reasons, Respondents assert Appellant's Motion to supplement the record on appeal must be dismissed as only evidence presented to the lower Court may be considered by an Appellant Court.

Respectfully submitted,

McANGUS GOUDELOCK & COURIE, LLC

April 22, 2013


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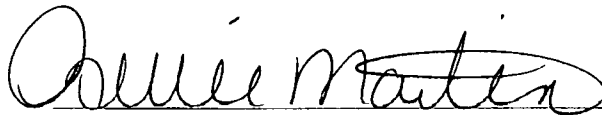
and

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PROOF OF SERVICE

I certify that on the 22nd day of April 2013, I served the **Respondents' Reply Motion** upon Frank Wilson by depositing a copy of same in the United States Mail, postage prepaid, via both *First Class Mail and Certified Mail-Return Receipt Requested*, addressed to:

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8755 Jessica Court
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