

SUPREME COURT OF ARKANSAS

No. CV-12-73

GREG PROCK

APPELLANT

V.

BULL SHOALS BOAT LANDING AND
AMERICAN HOME ASSURANCE AIG
CLAIM SERVICES

APPELLEES

Opinion Delivered May 30, 2013

MOTION TO SUPPLEMENT THE
RECORDREMANDED TO THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION TO SETTLE THE
RECORD.**PER CURIAM**

Appellant Greg Prock appeals the decision of the Arkansas Workers' Compensation Commission denying his claim for benefits associated with an injury he received during his employment with appellee Bull Shoals Boat Landing (Bull Shoals).¹ The Commission denied the claim based on a finding that Prock tested positive for controlled substances after the injury and that he failed to rebut the statutory presumption that his injury was substantially occasioned by his drug use. On appeal, Prock argues that the Commission's decision is not supported by substantial evidence. He also contends that the Commission lacks the authority to make credibility determinations contrary to those made by the administrative law judge and

¹The Arkansas Court of Appeals affirmed the Commission's denial of benefits. See *Prock v. Bull Shoals Landing*, 2012 Ark. App. 47, 390 S.W.3d 78. This court accepted review of the court of appeals's decision.

that the procedure by which Commissioners and law judges are selected results in an unconstitutional bias against claimants. Currently before the court is Prock's motion to supplement the record. We remand and order the Commission to settle the record.

Our review of the record reflects that Prock raised his constitutional challenge to the overall workers' compensation scheme in a motion to recuse filed prior to the hearing before the law judge. This motion and accompanying brief refer to affidavits and depositions that were purportedly attached as exhibits to the brief. The record, however, does not include these attachments. At the hearing before the law judge, Prock introduced into evidence two exhibits in support of this constitutional issue. Claimant's Exhibit One consists of a claim letter and a letter from the Arkansas Attorney General. According to the transcript of the hearing, Claimant's Exhibit Two purports to incorporate by reference Prock's brief in support of the motion to recuse. However, because the affidavits and depositions are not found in the record as attachments to the motion and brief, it is not clear whether they were among the items to be introduced into evidence.

Prock now has filed a motion to supplement the record with the affidavits and depositions. He suggests that they were inadvertently omitted from the record. In response, Bull Shoals objects to Prock's request for the record to be supplemented with documents "that were not included in the record."

We remand to the Commission to settle the record for two reasons. First, the documents that Prock has submitted are not certified by either the Clerk of the Commission or the court reporter who reported this case. Second, there is some question whether the

affidavits and depositions were actually placed in the record. Under these circumstances, we deem it necessary to remand to the Commission to settle the record within thirty days in accordance with Rule 6(e) of the Arkansas Rules of Appellate Procedure–Civil. The Commission shall determine whether the affidavits and depositions were entered in the record. If the documents were not made a part of the record, the Commission shall enter an order so stating for transmittal to this court. If the affidavits and depositions are contained in the record, the Commission shall submit a certified supplemental record to include the omitted documents. Prock shall then have fifteen days to file a substituted brief that conforms with Arkansas Supreme Court Rule 4-2 (2012). Bull Shoals shall then be afforded the opportunity to revise or supplement its brief.

Although we are remanding to settle the record with regard to the affidavits and depositions, we strongly encourage Prock to ensure that the record on appeal contains no other deficiencies.

It is so ordered.

Special Justice TJUANA BYRD and Special Justice JUDSON KIDD join.

HART and HOOFFMAN, JJ., not participating.

Frederick S. “Rick” Spencer, for appellant.

Worley, Wood & Parrish, P.A., by: *Jarrod S. Parrish*, for appellees.