

**SUPREME COURT OF ARKANSAS**

No. CV-12-75

MATTHEW L. EDMISTEN

APPELLEE

V.

BULL SHOALS LANDING AND AIG  
DOMESTIC CLAIMS

APPELLEES

Opinion Delivered May 30, 2013

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

Appellant Matthew Edmisten 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 Landing (Bull Shoals).<sup>1</sup> The Commission denied the claim based on a finding that Edmisten tested positive for illegal drugs after the injury and that he failed to rebut the statutory presumption that his injury was substantially occasioned by his drug use. On appeal, Edmisten contends that the Commission's decision is not supported by substantial evidence. He also contends that the structure of the Commission is unconstitutional because the "decisional independence" of the administrative law judges and the Commission has been infringed upon by both the executive branch of the State of Arkansas and private interests to the point of actual bias, as

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<sup>1</sup>The Arkansas Court of Appeals affirmed the Commission's denial of benefits. *See Edmisten v. Bull Shoals Landing*, 2012 Ark. App. 44, 388 S.W.3d 416.

well as the appearance of bias, thus violating the separation-of-powers doctrine and his procedural and substantive due-process rights. Currently before the court is Edmisten's motion to supplement the record. We remand and order the Commission to settle the record.

Our review of the record reflects that Edmisten raised his constitutional challenge 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. In addition, the record includes an entry that Edmisten's "Motion to Recuse and related documentation were made a part of the record on December 1, 2009." However, the record does not contain the affidavits and depositions or "related documentation."

Edmisten 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 Edmisten'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 Edmisten 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. Edmisten 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 Edmisten 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: *Jarrold S. Parrish*, for appellee.