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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM
THE WORKERS' COMPENSATION COMMISSION

SCWCC Case No. 1809996
Court of Appeals Case No. 2022-000864

William D. Downes, Employee, Respondent,

vs.

Bon Secours Mercy Health, Inc., Employer, and
Safety Nat'l Cas. Corp., Carrier, Appellants.

MEMORANDUM ON APPEALABILITY

Don Kamb
Williams & Kamb, LLC
P.O. Box 10693
Greenville, SC 29603
(864) 235-6254
Attorney for Respondent

TABLE OF AUTHORITIES

Cases

<u>Bone v. U.S. Food Serv.</u> , 404 S.C. 67, 744 S.E.2d 552 (2013)	2,3
<u>Charlotte-Mecklenburg Hosp. Auth. v. S.C. Dep't of Health & Envt'l Control</u> , 387 S.C. 265, 692 S.E.2d 894 (2010)	2
<u>Long v. Sealed Air Corp.</u> , 391 S.C. 483, 706 S.E.2d 34 (Ct. App. 2011)	2

Statutes

S.C. Code Ann. § 1-23-380(A)	2
S.C. Code Ann. § 42-17-60	3

STATEMENT OF THE CASE

This case arises from the Workers' Compensation Commission. The claim initially came before a single Commissioner on Respondent's Form 50 seeking additional benefits for an admitted injury by accident that occurred on April 17, 2018 while he was working for Appellant employer. Respondent had received some authorized treatment for his low back and his left leg, and he is continuing to receive weekly temporary total disability compensation benefits. At the hearing, Respondent contended he has not reached maximum medical improvement ("MMI") because he needs and is entitled to additional medical treatment for his back, specifically low back surgery recommended by neurosurgeon Dr. Esce. Appellants responded contending that such surgery is not warranted based on the opinions of the other physicians who have seen claimant, including neurosurgeons Dr. Bucci and Dr. Kanos. By stipulation, the only issue for determination at the hearing was entitlement to this low back surgery. All other issues—including permanency—were held in abeyance.

By Order dated October 22, 2021, the single Commissioner determined that Respondent has not reached MMI and is entitled to the treatment and surgery recommended by Dr. Esce.

Appellants appealed to the Full Commission Panel. A hearing was held before an Appellate Panel on March 21, 2022. By Order dated June 8, 2022, the Appellate Panel affirmed the single Commissioner's determination that Respondent has not reached MMI and is entitled to the treatment and surgery recommended by Dr. Esce.

Respondents now appeal to this Court, which has asked for a memorandum on appealability of the Full Commission's Order.

1. **The Full Commission's Order finding Respondent has not reached MMI and is entitled to additional surgical treatment is interlocutory, is not immediately appealable, and is not properly before this Court on appeal.**

A review of the circumstances surrounding this case shows neither appellants' Form 30 appeal to the Full Commission nor her appeal to this Court are interlocutory, as there is no other issue pending before the Commission and this case has already reached a final judgement.

In Charlotte-Mecklenburg Hosp. Auth. v. S.C. Dep't of Health & Env't'l Control, the Supreme Court looked to the Administrative Procedures Act and held that "judicial review may only be sought from a **final** decision" of an administrative agency. Charlotte-Mecklenburg Hosp. Auth. v. S.C. Dep't of Health & Env't'l Control, 387 S.C. 265, 692 S.E.2d 894 (2010)(emphasis in original). In so holding, the Court stated that "[i]f there is some further act which must be done by the court prior to a determination of the rights of the parties, the order is interlocutory" and that "[a] final judgment disposes of the whole subject matter of the action or terminates the particular proceeding or action, leaving nothing to be done but to enforce by execution what has been determined." Id. See also Long v. Sealed Air Corp., 391 S.C. 483, 706 S.E.2d 34 (Ct. App. 2011).

The Supreme Court further addressed appealability in Bone v. U.S. Food Serv., 404 S.C. 67, 744 S.E.2d 552 (2013). The Court looked to § 1-23-380(A) of the Administrative Procedures Act and noted that

On its face, the statute refers to a "final judgment," which is a well-established term of art in the law to which great significance is attached. See Good v. Hartford Accident & Indem. Co., 201 S.C. 32, 21 S.E.2d 209 (1942) (holding if a judgment determines the applicable law while leaving open questions of fact, it is not a final judgment); see also Charlotte-Mecklenburg Hosp. Auth. v. S.C. Dep't of Health & Env't'l Control, 387 S.C. 265, 267, 692 S.E.2d 894, 895 (2010)("A final judgment disposes of the whole subject matter of the action or terminates the particular proceeding or action,

leaving nothing to be done but to enforce by execution what has been determined.” (citing Good)).

Bone, 744 S.E.2d at 557. Concerning the definition of “final judgment,” the Court later also noted that

This Court's jurisprudence is in accord with the definition of a final judgment found in Black's Law Dictionary. It defines a final judgment as “[a] court's last action that settles the rights of the parties and disposes of all issues in controversy, except for the award of costs ... and enforcement of the judgment.” Black's Law Dictionary 919 (9th ed.2009).

Bone, 744 S.E.2d at 558-559. The Court observed that no award had been made in the case and that the Commission's order did not address the severity of the injury, whether Bone had reached MMI, or if she was entitled to medical treatment; therefore, the Court held that the order then before the Court was not final and interlocutory.

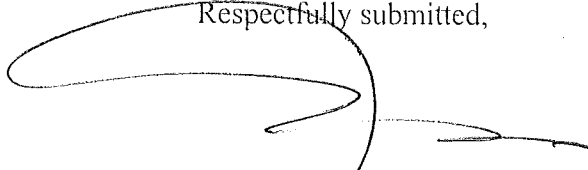
Here, as in Bone, there has not been a final judgment disposing of all the issues in the case. In fact, the Commission has determined that MMI has not been reached and additional medical treatment is necessary before the final determination of permanency can be reached. There is much left to be done before all issues in controversy in the claim are resolved. Appellants' remedy is to provide the treatment as ordered by the Commission and appeal this issue after Respondent has been determined to have reached MMI post-surgery and a final award of permanent compensation has been made. As such, the current order is interlocutory and is not immediately appealable.

In the alternative, if this Court finds that the Commission's order is now appealable, Appellants' should be required to immediately provide the medical treatment ordered, as required

under S.C. Code Ann. § 42-17-60 (2018). To date, Respondent has heard nothing from Appellants concerning this ordered medical treatment.

This case should not be heard by this Court and should be remanded to the Commission until all issues are resolved and a final order has been issued.

Respectfully submitted,



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Dated: 7/5/22

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William D. Downes, Appellant,

vs.

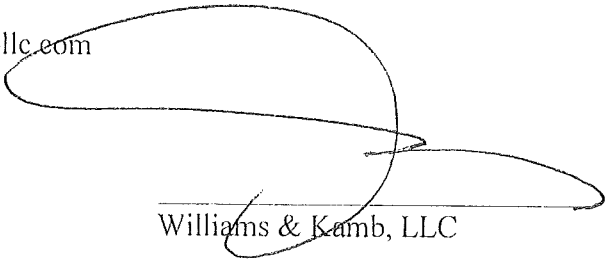
Bon Secours Mercy Health, Inc., and
Safety Nat'l Cas. Corp., Carrier, Respondents.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that Respondent's MEMORANDUM ON APPEALABILITY has been served on Appellants by depositing a copy in the U.S. Mail, postage prepaid on 7/5/22, addressed to their attorney of record:

Ashley R. Forbes, Esq.
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July 5, 2022

The Honorable Jenny Abbott Kitchings
Clerk of Court
S.C. Court of Appeals
P.O. Box 11629
Columbia, SC 29211

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SC Court of Appeals

Re: **William D. Downes v. Bon Secours Mercy Health, Inc., et al.**
Appellate Case No.: 2022-000864

Dear Ms. Kitchings:

Enclosed herein please find the following items for filing in the above matter:

1. Appellant's Memorandum on Appealability;
2. Certificate of Service.

By copy of this letter, I am also serving Respondent's attorney with a copy of the same.

Kindest regards,

Yours truly,

Williams & Kamb, LLC



Don Kamb

dek
Enclosure

cc: Ashley R. Forbes, Esq.
Joe Mooneyham, Esq.