

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
APPELLATE PANEL, WORKERS' COMPENSATION COMMISSION

Op. No. 2013-UP-230 (S.C. Ct. App. filed May 29, 2013)

Andrew Marrs, Respondent,

v.

1751, LLC d/b/a/ Saluda's, and
The South Carolina Uninsured
Employer's Fund, Defendants

Of Whom

1751, LLC, d/b/a Saluda's, is the Appellant.

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JUN 20 2013

SC Court of Appeals

RETURN TO PETITION FOR REHEARING

This return is filed pursuant to Rule 240(e) of the South Carolina Appellate Court Rules.

I.

In the petition for rehearing, Saluda's argues that this Court's decision is not sufficiently specific for additional appellate review.

This Court is not required to provide specific findings in every case. The appellate court rules require only that the court state the points which were necessary to its decision, and the rules also provide that an appellate court may use a memorandum opinion to affirm

a lower court's decision when the lower court's findings of fact are not clearly erroneous or no error of law appears. See Rule 220(b)(1), SCACR. The same rule also allows this Court to ignore any argument that is manifestly without merit. Rule 220(b)(2), SCACR. This rule mirrors the statutory requirements for appellate court decisions. See S.C. Code Ann. § 14-8-250 (Supp. 2012).

Saluda's is contending that because an administrative agency must give a detailed explanation for its decision, an appellate court must do the same. This premise is not correct. Administrative agencies are required to issue detailed decisions because the agency is the fact-finder. In order for there to be any meaningful appellate review, the agency must give a full accounting of the reasons for its decision. See S.C. Code Ann. § 1-23-350 (2005) (requirements for an agency's decision); see also *Able Communications, Inc. v. South Carolina Pub. Serv. Comm'n*, 290 S.C. 409, 351 S.E.2d 151 (1986) (vacating an agency's decision that did not comply with section 1-23-350).

The same is not true for an appellate court's decision. The memorandum decision in this case represents this Court's judgment that the workers' compensation commission reached the correct result. If Saluda's disagrees, there is no impediment to its presenting the Supreme Court with the same arguments it presented to this Court. Any further appeal will be testing the correctness of the commission's decision—not this Court's decision. There is no obstacle to further appellate review.

The Supreme Court often gives no reasons for denying a writ of certiorari, and this Court rarely gives detailed reasons for denying rehearing. There is no substantive infirmity with this Court's decision. Saluda's simply disagrees with it, and that is its prerogative.

II.

The second argument in the petition for rehearing is directed to the merits of the question whether Mr. Marrs' claim is barred because he was prohibited from entering the area where he was injured.

The parties explored this argument in detail in their briefs. Mr. Marrs would direct the Court's attention to pages 5 through 9 of his brief on the merits.

Saluda's continues to advance a rule that relies on the employer having given a specific prohibition to the employee. The argument seeks to draw a distinction between an "order of prohibition" and a "warning."

This is not an accurate representation of the rule of law that is explained in this Court's and the Supreme Court's previous decisions. The rule *presumes* that an employee has disobeyed an order, a warning, or an instruction. Compensability does not hinge on whether the rule the employee violated was a "warning" or an "order." Instead, the employee's entitlement to benefits hinges on whether the order set the boundary of the employee's job versus whether the order governed the employee's conduct while doing his job. Neither the appellant's merits brief nor the petition for rehearing explore this question.

III.

The third argument in the petition for rehearing addresses the question whether Mr. Marrs' smoke break falls within the personal comfort doctrine.

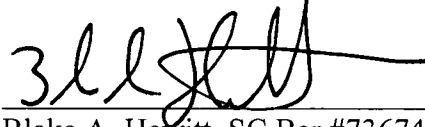
Here again, this is an issue the parties explored in their briefs. See (Brief of Respondent, pp.9-10). This smoke break began on the back stoop of the restaurant, and as Mr. Marrs' brief described, there has never been any argument that this stoop was off limits.

CONCLUSION

For the reasons set forth in this return, the Court should deny the petition for rehearing.

June 20, 2013

Respectfully submitted,



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WCC File No. 1003812

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PROOF OF SERVICE

The undersigned hereby certifies that on the date indicated below she served counsel for the Appellant with a copy of the *Petition for Rehearing* by mailing a copy of the same by United States Mail with first class postage prepaid to the following address:

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June 20, 2013
Columbia, South Carolina