

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SC WORKERS COMPENSATION COMMISSION

Appellate Panel:
Commissioner Andrea Pope Roche
Commissioner Derrick L. Williams
Commissioner David W. Huffstetler

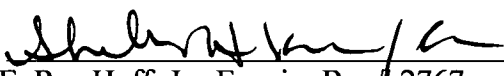
WCC File No. 0906951

Bernard D. Lee,..... Respondent,

v.

Bondex Inc. and Great American Alliance Insurance Company,Appellants.

Memorandum with Regard to
Bone v. US Foodservice, Opinion No. 27153 Filed August 1, 2012


E. Ros Huff, Jr., Esquire Bar # 2767
Shelby H. Kellahan, Esquire Bar #74731
HUFF LAW FIRM, LLC
Post Office Box 1935
7244 Woodrow Street Irmo, South Carolina 29063
(803) 252-2232
Attorneys for Appellant Bondex Inc. and Great
American Alliance Insurance Company

Other Counsel of Record:
Ann Mickle, Esquire
Mickle & Bass, LLC
930 Oakland Avenue
PO Box 10751
Rock Hill, SC 29731

August 1st, 2013

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SC Court of Appeals

I. Section 1-23-390 is inapplicable.

In the Bone decision, the court's determination of the Workers Compensation Commission order's appealability all hinged upon an interpretation of Section 1-23-390. This statute is not applicable in this instance because Bernard Lee's case is post 2007 and was not appealed to the circuit court under Section 1-23-390. The code section 1-23-380 is applicable.

Under S.C. Code Ann. Section 1-23-380:

A party who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review pursuant to this article and Article 1... (emphasis added)

The defendants have exhausted their administrative remedy as to the issue of compensability and awarding disability and medical benefits. The only review left is to the Court of Appeals under Section 1-23-380. Currently both medical and disability benefits are being paid and the defendant's position is therefore prejudiced by the Commission's ruling.

II. This Order does not include a remand and is final.

The Bone Court also relies upon the recent decision in Long v. Sealed Air Corporation. Long, 391 S.E. 483, 706 S.E.2d 34 (Ct. App. 2011). However, the Long decision is clearly distinguishable from the current situation. In Long, the Workers' Compensation Commission denied a worker's claim on the grounds that the claimant failed to timely report her injury; the trial court reversed and **remanded** the matter to the Commission "for further investigation." Long v. Sealed Air Corp., 391 S.C. 483, 706

S.E.2d 34, 2011 S.C. App. LEXIS 10 (S.C. Ct. App. 2011). (emphasis added). In the instant matter, there is no further investigation to be made and there is no remand.

The SC Workers Compensation Commission Appellate Panel in its order states that “we find that the claimant submitted evidence of injuries to other body parts however, we elect to hold all other injuries alleged by claimant (low back and right shoulder/arm) in abeyance pending further review.” (R. Vol. I p. 29). This determination was an error of law because what review is there to be had? There is no statute that allows the Commission further review. A hearing was held, notice was given and evidence was received. The Commission was mandated to make a determination pursuant to SC Code Ann. Section 42-3-180. When the issue of compensability was raised and not ruled upon, the claimant is forever barred from litigating the issue.

As the Court in Keeter v. Clifton Mfg. Co. states, “the Commission could not, by undertaking to retain jurisdiction for 300 weeks pending future developments, circumvent the limitation of 12 months within which an award may be reviewed for change in conditions.” Keeter v. Clifton Mfg. Co., 225 S.C. 389, 82 S.E.2d 520 (1954). See also; Clark v. Aiken County Gov't, 366 S.C. 102, 620 S.E. 2d 99 (Ct. App. 2005). Unlike Administrative Agencies, the appellate procedure within the workers compensation commission creates a *denovo* review. The decision of the SC Workers Compensation Appellate Panel is final regarding fact and law. Therefore, the decision in this matter was final and appealable as the Appellants exhausted their administrative remedies and there was no remand made.

III. The Montjoy and Charlotte Mecklenburg decisions.

The Bone Court relies on the decisions of Montjoy and Charlotte Mecklenburg to prove that the decision is not appealable. Montjoy has no bearing on the current matter as the order of the Commission does not remand the matter and the order in Montjoy does.

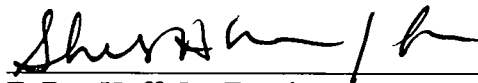
The Bone Court also relies on the Charlotte Mecklenburg case which states that “a final judgment disposes of the whole **subject matter** of the action or terminates the particular proceeding or action leaving nothing to be done but to enforce by execution what has been determined.” Charlotte Mecklenburg Hospital Aut. v. South Carolina Department of Health and Evtl. Control, 3897 S.C. 25, 267, 692 S.E.2d 894, 895 (2010). Charlotte Mecklenburg is applicable to the current situation because there is nothing further to be done except for the appellants to pay the benefits as awarded to the claimant. As such, this matter is appealable to the SC Court of Appeals pursuant to the Charlotte Meklenburg decision.

CONCLUSION

For the foregoing reasons, the Appellants contend that the Bone v. US Foodservice decision does not limit the Appellant's right to appeal this matter.

Respectfully Submitted,

August ^{1st}, 2013



E. Ros Huff, Jr., Esquire
HUFF LAW FIRM, LLC
Post Office Box 1935
7244 Woodrow Street
Irmo, South Carolina 29063
(803) 252-2232
Attorney for Appellants Bondex and Great
American

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WCC File No. 0906951

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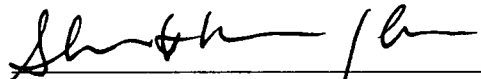
v.

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PROOF OF SERVICE

I certify that I have served the memorandum with regard to the Bone decision on Bernard Lee by depositing a copy of the same in the United States Mail, postage prepaid, on August 1, 2013, addressed to his attorney of record Ann M. Mickle, Esquire at Mickle & Bass, LLC, 930 Oakland Avenue, PO Box 10751, Rock Hill, SC 29731

August 1, 2013



E. Ros Huff, Jr., Esquire #2767
Shelby H. Kellahan, Esquire #74731
HUFF LAW FIRM, LLC
Post Office Box 1935
7244 Woodrow Street
Irmo, South Carolina 29063
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Attorneys for Appellants

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HUFF

LAW FIRM LLC

E. Ros Huff, Jr.
roshuff@colalaw.com

Shelby H. Kellahan
skellahan@colalaw.com

August 1, 2013

The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211
VIA HAND DELIVERY

Re: Bernard Lee, Respondent v. Bondex Inc. and Great American Alliance Insurance
Company Appellants
WCC File No. 0906951
Case Tracking Number 2011203326

Dear Ms. Kitchings:

Enclosed please find a copy of Appellant's Memorandum with Regard to Bone v. US
Foddservice and proof of service.

By copy of this letter, I am hereby serving all other attorneys of record with copies of
these documents.

Please do not hesitate to contact me if you have any questions.

Sincerely,

E. Ros Huff, Jr.

ERH/shk
Enclosures
cc:

Ann M. Mickle, Esquire

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SC Court of Appeals

Honorable Jenny A. Kitchings
August 1, 2013
Page Two

Bcc: Steve Anthony
Janis Napier (via email)