

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

APPELLATE CASE NO. 2013-001071

Michael McCain, Employee/Appellant,

v.

West Manning Auto, Employer,

and

South Carolina
Uninsured Employers'
Fund, Carrier,
Respondents.

MEMORANDUM IN SUPPORT OF APPEALABILITY

BACKGROUND

In this case, the Appellant, Michael McCain, Employee/Claimant/Appellant petitions the South Carolina Court of Appeals to remand the case to the South Carolina Workers' Compensation Commission for a proper review of the Order from the Single Commissioner in this case or to have an evidentiary hearing with regard to the issue of service.

Issue

Is the Order of the Workers' Compensation Commission appealable in this case?

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Analysis

S.C. Code § 1-23-380 (Cum. Supp. 2012) states as follows:

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. This section does not limit utilization of or the scope of judicial review available under other means of review, redress, relief, or trial de novo provided by law. A preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy. Except as otherwise provided by law, an appeal is to the court of appeals.

A key point is whether the actions of the Workers' Compensation Commission Panel in this case provided the proper remedy or followed proper procedures.

S.C. Code § 1-23-380 explicitly provides that judicial review is available if preliminary agency action does not provide an adequate remedy. The Order of the Workers' Compensation Commission in this case should be reviewable because there are certain procedural safeguards that needed to be taken which were not observed in this particular case.


There was no showing of good cause nor was there an evidentiary hearing to show whether proper service was obtained. S.C. Code § 42-17-50 (Cum. Supp. 2012) requires a showing of good grounds to review further evidence. What occurred was unsworn testimony from an alleged party claiming he was not properly served. Mail was sent to where the party worked. Also, at the time of this hearing, the individual was no longer a party. Where is the prejudice to that alleged party? There are certain procedural safeguards that should have been followed but which were not followed in this case.

The Workers' Compensation Commission Panel did not follow the proper statutory provisions provided for taking evidence or even addressing the issue with regard to service. The Panel assumed service was ineffective or that there was prejudice in this matter without even taking sworn testimony. If a party wants to introduce new evidence into the record, the party shall file a motion and affidavit with the Commission's Judicial Department (S.C. Reg. 67-707(B)). No such motion or affidavit was ever made or filed.

Also, S.C. Code § 1-23-610 (Cum. Supp. 2012) provides for review of administrative decisions where there has been a violation of constitutional or statutory provisions, excessive statutory authority, unlawful procedures or other errors of law. The Workers' Compensation Commission Panel did not follow the proper procedures. The determination of what is a final order should not be so narrowly drawn as in the case of Bone v. U.S. Food Service, 399 S.C. 566, 733 S.E.2d (2012) so as to preclude review of an agency's order when constitutional or statutory safeguards are not followed.

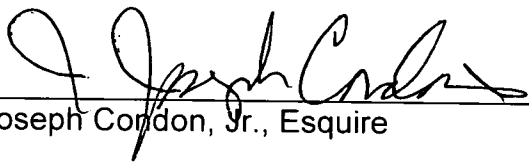
Therefore, it is respectfully requested that this case be heard and reviewed by the Court of Appeals and that the Court of Appeals remand for a proper review of the single Commissioner's Order or an evidentiary hearing with regard to the issue of service or prejudice to a non-party.

Charleston, SC
August 9, 2013



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