

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Full Commission Appellant Panel

W.C.C. FILE NO. 1115949

Clayton Sims

Appellant,

v.

A&D Environmental Services, Employer and
Chubb Indemnity Insurance Company, Carrier

Respondents.

MOTION TO HOLD THE APPEAL IN ABEYANCE

YOU WILL PLEASE TAKE NOTICE that the Appellant, Clayton Sims, by and through his undersigned attorney, hereby moves the honorable Judges of the Court of Appeals of South Carolina for an Order either holding the appeal in this matter in abeyance because issues in this case are still in litigation before the South Carolina Workers' Compensation Commission (Commission) or vacating the appeal because it is not a final judgment, appealable order or decision. The grounds of this motion are as follows:

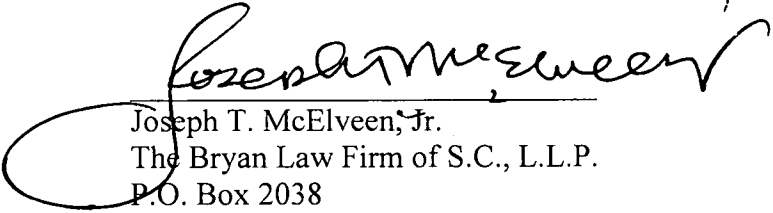
1. The matter of Clayton Sims, Employee, vs. A&D Environmental, Carrier, and Chubb Indemnity Insurance Company, Carrier, bears the file number WCC 1115949 before the Commission.
2. The Appellant has timely filed a Notice of Appeal of a Decision and Order of the Commission dated July 22, 2013.
3. The Appellant believes that the aforementioned Decision and Order is not a final judgment, appealable order or decision which will support an appeal at this time, but he files this appeal as a precautionary matter to preserve his right to appeal to this honorable Court the issues resolved in the said Decision and Order. If such Decision and Order is not appealable at this time, he respectfully submits that this appeal should be vacated pending the Appellant's right to appeal when all matters before the Commission are resolved.
4. In the alternative, should this honorable Court determine that the Decision and Order does qualify as an appealable order, the Appellant respectfully requests that this appeal be held in abeyance until all issues in the matter are resolved by the Commission.

5. In either event, judicious use of court time requires that the appeal of the said Decision and Order should not proceed at this time, but should be considered at the same time as the remaining issues in the captioned matter.
6. This case involves a work injury to the Appellant's left arm. The Decision and Order aforementioned determined that the Appellant's carpal tunnel syndrome was not an injury that occurred in the scope and course of employment; but it further held that the shoulder injury was work related. Medical treatment for the shoulder and payment of compensation were ordered. So the Decision and Order presently upon appeal to this honorable Court did not result in a full and final order.
7. Another Order was been issued by a hearing Commissioner on July 31, 2013 which does purport to conclude this matter, although the Appellant contends that he has not reached maximum medical improvement. Therefore, the Appellant has requested review of that Order by the full Commission. The Appellant filed his request for review on August 13, 2013.
8. Judicial economy and the ends of justice will best be served by having one appeal to the courts in this matter.
9. Attached hereto are the Decision and Order dated July 22, 2013, presently under appeal (Exhibit A); the Decision and Order dated July 31, 2013, presently under review by the Commission; and the Appellant's Form 30, Request for Review, which has been filed with the Commission.

WHEREFORE the Appellant respectfully prays that this honorable Court either:

1. Vacate the notice of appeal filed by the Appellant on August 20, 2013, sending the matter back to the Commission until this matter is completed; or
2. Hold this appeal in abeyance until this honorable Court can consider both orders at the same time, to wit, upon completion of the review now pending before the Commission.

RESPECTFULLY SUBMITTED,



Joseph T. McElveen, Jr.
The Bryan Law Firm of S.C., L.L.P.
P.O. Box 2038
Sumter, SC 29151-2038
(803) 775-1263
Attorney for the Appellant

Other Counsel of Records:
Daniel Eller, Esquire
Eller Tonnsen Bach
2201 Augusta Street, Suite 200
Greenville, SC 29605
(864) 236-5013
Attorney for the Respondent

21st day of August, 2013

IN THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE SOUTH CAROLINA WORKERS' COMPENSATION
COMMISSION

69543

WCC NO. 1115949

Clayton
Sims.....Appellant,

v.

A&D Environmental Services, Employer and
Chubb Indemnity Insurance Company,
Carrier.....Respondents.

PROOF OF SERVICE

I certify that I have served the Motion to hold the appeal in abeyance on A&D Environmental Services, and Chubb Indemnity Insurance Company, by depositing a copy of it in the United States Mail, postage prepaid, on August 21, 2013, addressed to their attorney of records, Daniel Eller, Esquire 2201 Augusta St., Suite 200, Greenville, SC 29605, on August 21, 2013.

August 21, 2013

Elizabeth W. Nesbitt
Elizabeth W. Nesbitt, paralegal to
Joseph T. McElveen, Jr., Esquire,
Attorney for the Appellant
The Bryan Law Firm of S.C., L.L.P.
P.O. Box 2038
Sumter, SC 29151-2038