

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Full Commission Appellant Panel

Appellate Case No.2013-001796

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SEP 16 2013

Clayton Sims

v.

SC Court of Appeals

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

Appellant,
Respondents.

MEMORANDUM ADDRESSING THE ISSUE OF APPEALABILITY

ISSUE: This appeal should either be vacated as being from an order that is not appealable at this time, or it should be held in abeyance until the remaining issues are resolved by the South Carolina Workers' Compensation Commission (SCWCC).

Appellant/Claimant, hereinafter called Clay, suffered a work injury. He contended that he injured his arm and shoulder. The Defendants denied the compensability of his workers' compensation claim. Prior to the hearing on compensability, the Defendant's agreed to accept the shoulder injury as compensable, but they continued to deny the arm injury (carpal tunnel syndrome or CTS). The hearing Commissioner issued an order which denied the CTS, but ordered treatment for the shoulder based upon acceptance of that portion of the claim. An Appellate Panel of the Commission affirmed denial of the CTS.

The order denying CTS was a "final order" as to that issue; but other issues remained in litigation with regard to the shoulder claim. The Panel actually held its review hearing and issued its CTS order about the same time as the parties were going to a hearing to determine whether Clay needed further treatment of his shoulder or the case should be concluded. Clay timely filed the instant appeal of the CTS order to the Court of Appeals. An order has now been rendered on all other issues; a request for review has been filed with SCWCC; and the first brief is due to the Commission in less than forty-five days.

The Order being appealed to this Court is a final order in the sense that it has for the present ended the CTS portion of the claim; it affects substantial rights of the parties. However, the rest of the case with the same Commission file number has not been finally concluded. So in that sense, the CTS order is not a final order. Trying to preserve his right to appeal the CTS order, Clay could not assume that the CTS order is not a final one. Such a course was too risky. So he filed this appeal.

This writer does not know how often something like this happens. In this case, however, fairness dictates that the entire claim be considered by this Court at one time.

Furthermore, wise use of judicial time and effort would seem to dictate that all issues be resolved at once. On the other hand, there may be occasions when appeal of a partial order, such as the one relating herein to CTS, needs to be moved forward so that needed treatment can be obtained; but that is not the case here. (Clay had health insurance at the time and was able to get the surgery.)

Arguably, Appellate Practice Rule 203(b)(6) could cover this situation. The last sentence reads:

If a decision indicates that a more full and complete decision is to follow, a party need not appeal until receipt of the more complete decision.

However, the decision and order in this case does not contain such language. Also, the Rule may be addressing situations where a short order is issued with assurance that a more complete discussion of the issues will follow.

Suggesting a hard and fast rule on a matter such as this is difficult for this writer. As mentioned above, there are often partial orders which justice demands be appealed immediately. The Appellant suggests that the wisest course in a case such as this might be to simply hold the current appeal in abeyance until the Court is advised either by a subsequent appeal or correspondence that the other issues in the case have been resolved. At such time, the appeals could be consolidated, if necessary. In the alternative, the Court can determine that the CTS order is not a final order, appealable at this time, and that the matter should be remanded to the Commission until such time as all issues have been ruled on by the Commission. Either way, all issues can be considered by the Court of Appeals at once and determined with one opinion.

RESPECTFULLY SUBMITTED,



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13th day of September, 2013

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PROOF OF SERVICE

I certify that I have served the Memorandum Addressing the Issue of Appealability 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 September 13, 2013.

September 13, 2013

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