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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Appellate Panel

Appellate Case No. 2022-001153
W.C.C. No. 1824344

Zachary Brown.....Claimant/Respondent,

v.

Southeastern Services, H.H.I., LLC, Employer and
Uninsured Employers' Fund, Carrier, Defendants,
of which Uninsured Employers' Fund is the.....Appellant.

MEMORADUM OF RESPONDENT

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November 27, 2024

By letter dated October 24th, the Court of Appeals requested that the parties to the present action provide memoranda addressing the question of whether the decision of the Workers' Compensation Commission is immediately appealable. The Respondent would respond as follows:

Respondent would respectfully submit that the Decision and Order of the Appellate Panel of the Full Commission is not immediately appealable and that the case is not ripe for this Court's review. The issue presented by the Court is one governed by the Administrative Procedures Act (APA) as interpreted by our Courts, principally explicated by the Supreme Court in *Bone v. U.S. Food Serv.*, 404 S.C. 67, 744 S.E.2d 552 (S.C. 2013). Under the APA, only 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." S.C. Code Ann. § 1-23-380. This section also provides that "[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." *Id.*

The Decision and Order of the Appellate Panel of the Commission, dated July 22, 2022, amounts to an intermediate agency action or ruling under the APA and is not subject to immediate review. Importantly, the statute referenced above refers to a "final judgment," a legal term of art whose meaning has been well-established by our courts. *See Bone v. U.S. Food Serv.*, 404 S.C. 75. ("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")(quoting *Charlotte-Mecklenburg Hosp. Auth. V. S.C. Dep't of Health & Env't'l Control*, 387 S.C. 265, 267, 692 S.E.2d 894, 895 (2010)). In the Decision and Order, the Commission found *inter alia* that: the Commission had jurisdiction over the parties because the

Employer regularly employed four (4) or more employees at the time of the accident; that the Respondent was an employee of Appellant employer at all times relevant to the action; that the Respondent sustained a compensable workplace injury; that Appellant employer is responsible for past emergency medical treatment and prospective causally related medical treatment; and that the Respondent is entitled to a definite period of temporary total disability benefits outlined by the Decision and Order. The Decision and Order concerned only jurisdiction, compensability and entitlement to medical and temporary disability benefits. It did not dispose of the whole action as it did not reach permanent disability benefits or entitlement to any other benefits under the Act, to which the Respondent may have been entitled. Accordingly, the Decision and Order was a temporary agency action and not a “final judgment” to which Appellants should not be entitled to immediate review by this Court.

Further supporting the Respondent’s contention that an order from the Commission granting compensability and temporary benefits to a claimant under the South Carolina Workers’ Compensation Act (“hereinafter, “the Act”) is not immediately appealable, is this Court’s holding in *Rose v. JJS Trucking, LLC*, 768 S.E.2d 412, 411 S.C. 366 (Ct. App. 2015). In *Rose* the uninsured employer appealed an order of the Commission denying the employer’s petition to transfer responsibility for continuing compensation and benefits to the South Carolina Uninsured Employers’ Fund pursuant to S.C. Code Ann. § 42-1-415(A). The Commission determined that the claimant’s injury was compensable, granted temporary benefits, but found that the claimant had not yet reached maximum medical improvement and therefore did not rule on his claim for permanent disability. The Court held that because the Commission’s “order leaves the merits of Rose’s claim for permanent disability unresolved . . . the order is not a final decision and not immediately appealable.” *Id* at 413. This Court specifically noted that “[b]ecause the commission

has not yet ruled on the merits of Samuel Rose’s *entire claim*,” that the case was not ripe for this Court’s review. *Id.* This Court further held that the appellant employer could make no sound argument that the intermediate agency action would not afford the employer of an adequate remedy such to entitle the employer to immediate review pursuant to S.C. Code Ann. 1-23-380, noting that the employer could always request that the Commission order the transfer at a later time, and that it left the remedy of an appeal after the Commission’s final decision in the case.

In the present case, the Commission has not yet reached a final decision on the merits of the Respondent’s *entire claim*. Much like the Appellants in the *Rose* case, the Appellants would be hard-pressed to show that awaiting a final decision of the Commission regarding the remainder of the Respondent’s claim would somehow fail to provide them an adequate remedy. In the present case, the UEF has been ordered to pay benefits awarded to the Respondent after the Commission found that the employer was operating without workers’ compensation insurance. The UEF may avail itself of all the protections afforded under the Act, including rights to reimbursement from the uninsured employer after a final decision on the merits of the Respondent’s entire claim.

Given the foregoing, the Respondent respectfully submits that the appeal of the Decision and Order of the South Carolina Workers’ Compensation Commission be dismissed.

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