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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

The Honorable Melody L. James, The Honorable Aisha Taylor,
and The Honorable Cynthia C. Dooley
Commissioners for the Appellate Panel

SCWCC File No.: 1925084
Appellate Case No. 2024-0001822

Christina Walthour, Claimant,Respondent

v.

Remedy Intelligent Staffing, Inc., Employer, and
XL Insurance America Inc., Carrier,Appellants.

APPELLANTS' PETITION FOR REHEARING AND REINSTATEMENT

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Orders

Walthour v Remedy Intelligent Staffing, Inc., SC Ct. App. Order dated October 30, 2024

QUESTIONS PRESENTED

1. Is the South Carolina Workers' Compensation Commission Appellate Panel (the "Appellate Panel") Decision and Order, dated October 3, 2024, immediately appealable to the Court of Appeals?
2. Is the Appellate Panel's determination of the compensability of a claim a final decision on the merits as defined by S.C. Code Ann. § 1-23-380 and South Carolina case law?
3. If the Appellate Panel's determination of the compensability of a claim is not a final decision on the merits, then does the Appellate Panel's decision provide Appellants with an adequate remedy as defined by S.C. Code Ann. § 1-23-380 and South Carolina case law?

STATEMENT OF THE CASE

Appellants' Petition for Rehearing stems from an Order issued by Justice Hewitt on October 30, 2024. See Walthour v Remedy Intelligent Staffing, Inc., SC Ct. App. Order dated October 30, 2024.¹ The order issued by Justice Hewitt dismissed Appellants' appeal, and ordered remittitur under Rule 221(b), SCACR. Id. Justice Hewitt ruled that Appellants' appeal should be dismissed since "a final order has not been issued by the Commission and there are matters remaining to be decided." Id. Pursuant to Rule 221(a), SCACR, and Rule 260(a), SCACR, Appellants are asking the Court of Appeals to rehear this matter and then reinstate Appellants' appeal.

Procedurally, this case arrived at the Court of Appeals following Appellants denial of Respondent's workers' compensation claim. Based on Appellants' denial of Respondent's claim, Respondent requested a hearing to determine the compensability of the claim.

On November 29, 2023, a hearing was conducted by Commissioner Avery B. Wilkerson.² The single commissioner determined that the claim was compensable, and Appellants filed a notice

¹ In an effort to be concise and to assist the Court, Appellants shall hereinafter refer to this Order as "Justice Hewitt's Order."

² Commissioner Wilkerson is no longer a Commissioner with the South Carolina Workers' Compensation Commission.

of appeal to the Appellate Panel. Oral arguments were heard by the Appellate Panel on July 15, 2024. The Appellate Panel issued its decision and order on October 3, 2024. The Appellate Panel upheld the single commissioner's decision and found that Respondent's claim was compensable.

Subsequently, on October 25, 2024, Appellants timely filed a Notice of Appeal with the Court of Appeals for review of the Appellate Panel's decision and order. As discussed above, Justice Hewitt issued his order five days later on October 30, 2024.

STANDARD OF REVIEW

"A petition for rehearing shall be in accordance with Rule 240, and shall state with particularity the points supposed to have been overlooked or misapprehended by the court." Rule 221(a), SCACR. Generally, a petition for rehearing must state "the points supposed to have been overlooked or misapprehended by the Court." Arnold v. Carolina Power & Light, 168 S. C. 163, 167 S. E. 234 (1933).

"A case shall not be reinstated except by leave of the court, upon good cause shown, after notice to all parties." Rule 260(a), SCACR.

Rule 221(a), SCACR and Rule 260(a), SCACR, set forth standards of review for both a petition for rehearing and a petition for reinstatement. Appellants agree that the Court of Appeals can issue a ruling based on the standards of review set forth in Rules 221 and 260, SCACR; however, Appellants would argue that the appropriate standard of review is one used for statutory construction, which is de novo.

Justice Hewitt's Order turns on the interpretation of S.C. Code Ann. § 1-23-380, and as such the Court should adhere to the standard of review for statutory construction. "Determining the proper interpretation of a statute is a question of law, and this Court reviews questions of law

de novo.” Town of Summerville v. City of N. Charleston, 378 S.C. 107, 110, 662 S.E.2d 40, 41 (2008).

“The cardinal rule of statutory construction is to ascertain and give effect to the intent of the legislature.” Brown v. Bi-Lo, Inc., 354 S.C. 436, 439, 581 S.E.2d 836, 838 (2003). We must give the words in a statute their plain and ordinary meaning, without resort to subtle or forced construction to limit or expand the statute's operation, and when the words are unambiguous, we must apply their literal meaning. CFRE, LLC v. Greenville Cnty. Assessor, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011). Statutes should be read in harmony with their purpose and with other provisions that are part of the same general statutory law in order to determine their effect. Id.

ARGUMENT

1. Is the South Carolina Workers’ Compensation Commission Appellate Panel (the “Appellate Panel”) Decision and Order, dated October 3, 2024, immediately appealable to the Court of Appeals?

And

2. Is the Appellate Panel’s determination of the compensability of a claim a final decision on the merits as defined by S.C. Code Ann. § 1-23-380 and South Carolina case law?

Appellants first two questions presented are interconnected and thus Appellants will address both at the same time.

“The APA establishes the standard for judicial review of decisions of the Commission.” Bone v. U.S. Food Serv., 404 S.C. 67, 73, 744 S.E.2d 552, 556 (2013) (holding the APA, not the general appealability statute of section 14-3-330, establishes the applicable standard for review); see also Lark v. Bi-Lo, Inc., 276 S.C. 130, 132, 276 S.E.2d 304, 305 (1981) (stating the APA “purports to provide uniform procedures before State Boards and Commissions for judicial review after the exhaustion of administrative remedies”).

Therefore, the plain language of S.C. Code Ann. § 1-23-380 governs judicial review of the Appellate Panel's decision by the court of appeals. Specifically, S.C. Code Ann. § 1-23-380 states,

“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 Except as otherwise provided by law, *an appeal is to the court of appeals.*”

“Our appellate courts have previously explained that an agency decision, including one by the Commission, is generally not a “final decision” unless it resolves the merits of the action.” See, e.g., Bone, 404 S.C. at 73–74, 744 S.E.2d at 556 (stating “[a]n agency decision which does not decide the merits of a contested case ... is not a final agency decision subject to judicial review” (second alteration in original) (quoting S.C. Baptist Hosp. v. S.C. Dep't of Health & Env't'l Control, 291 S.C. 267, 270, 353 S.E.2d 277, 279 (1987)); Price v. Peachtree Elec. Servs., Inc., 405 S.C. 455, 457, 748 S.E.2d 229, 230 (2013)).

South Carolina case law has determined that a final decision is a decision which resolves the merits of the action. This is a workers' compensation claim which was denied by the Appellants. The merits of the claim are to determine whether this workers' compensation claim is compensable or not. Both the single commissioner and the Appellate Panel found that Respondent's workers' compensation claim was compensable, which is absolutely a final decision on the merits.

If the Appellate Panel's decision is not appealable then the case is over for Appellants and the claim is compensable. There is no future hearing with the South Carolina Workers' Compensation Act that would allow Appellants to relitigate the compensability of the claim. Therefore, Appellants have exhausted all of their “administrative remedies available within the

agency”. S.C. Code Ann. § 1-23-380. Appellants are “aggrieved by a final decision in a contested case” and they are “entitled to judicial review,” which is an “appeal to the court of appeals.” Id.

Justice Hewitt’s Order relies on the decision in Bone v. U.S. Food Serv., 404 S.C. 67, 744 S.E.2d 552 (2013). Appellants believe the reliance on Bone is misplaced, as the decision in Bone does not control in this matter. The controlling case is the recent South Carolina Supreme Court decision in Davis v. S.C. Dep’t of Corr., 444 S.C. 138, 153, 906 S.E.2d 569, 577 (2024), reh’g denied (Oct. 10, 2024).

The Court in Davis stated the following,

“This reading harmonizes the statutory language in section 1-23-380 with its plain meaning and with the purpose of the workers’ compensation statutory scheme, which is to facilitate a streamlined review of the merits of a claim. *In our view, the intent of the South Carolina General Assembly is to allow the Appellate Panel to administratively review a final “award” (grant or denial of a claim)* by the single commissioner (under section 42-17-50), and then to permit, in turn, *judicial review* of the “final agency decision” of the Appellate Panel *in a direct appeal to the court of appeals* (under section 1-23-380).” Id. (Emphasis added).

The South Carolina Supreme Court’s decision in Davis has specifically and unequivocally determined what is to be considered a final decision on the merits in a workers’ compensation case. According to the Court in Davis, a final decision on the merits is one in which a decision is issued regarding the *“grand or denial of a claim.”*

There is no question that the single commissioner and the Appellate Panel issued a decision and order ruling on the grant or denial of the claim. At the hearing before the single commissioner and the Appellate Panel, Appellants contention was that Respondent’s claim was not a

compensable claim. Both the single commissioner and the Appellate Panel ruled against Appellants and determined that Respondent's claim was compensable. Therefore, pursuant to the decision in Davis, Appellants have exhausted their administrative remedies, a final decision on the merits has been issued, and Appellants are now entitled to judicial review by the Court of Appeals. Id., see also Davis at 153 and 577 (2024).

Regarding the decision in Bone, Appellants would first point out that Bone involved a case in which the Circuit Court had jurisdiction over appeals from the Appellate Panel, which is no longer the law in this state.³ Therefore, Appellants position is that as the Bone decision relates to the appealability of a case and the jurisdiction of the Court of Appeals, it is not applicable to cases under the new law in which appeals from the Appellate Panel are now immediately directed to the Court of Appeals.

However, it should also be noted that the decision in Bone was extremely divisive, resulting in a 3-2 decision in which two of the justices concurred in the result only and the other two justices wrote a lengthy and compelling dissent. Therefore, Appellants would also argue that the portion of the decision in Bone that addresses the interpretation of a final decision under S.C. Code Ann. § 1-23-380 has now been overruled by the decision in Davis. In fact, Justice Kittridge argued in Davis that Bone should be overruled.

Based on the foregoing, Appellants believe that it is clear that this case is immediately appealable to the court of appeals and should be reinstated.

³ "This case arose under prior law that required an appeal from the Commission to be made first to the circuit court. Such appeals are now directed to the Court of Appeals for all injuries occurring on or after July 1, 2007. S.C.Code Ann. § 42-17-60 (Supp.2012)"; Pee Dee Reg'l Transp. v. S.C. Second Injury Fund, 375 S.C. 60, 650 S.E.2d 464 (2007). See the first footnote in Bone.

3. If the Appellate Panel's determination of the compensability of a claim is not a final decision on the merits, then does the Appellate Panel's decision provide Appellants with an adequate remedy as defined by S.C. Code Ann. § 1-23-380 and South Carolina case law?

Appellants believe that the Appellate Panel's decision is a final decision on the merits under S.C. Code Ann. § 1-23-380, however there is an exception to the general rule. S.C. Code Ann. § 1-23-380 states, "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."

Even if the Appellate Panel decision could somehow be construed as interlocutory or otherwise not final, then the Appellate Panel decision has left Appellants without an adequate remedy.

If Appellants' appeal is dismissed, then Appellants will be forced to make the following payments:

1. Payment of back owed temporary total disability compensation to Respondent.
2. Begin the payment of ongoing weekly temporary total disability compensation to Respondent.
3. Payment of all causally related medical treatment in the past.
4. Payment for all causally related medical treatment until Respondent reaches MMI.
5. Payment of temporary total disability once Respondent reaches MMI, and all causally related medical treatment Respondent will need in the future.

According to the Justice Hewitt Order, only after all of this takes place will Appellants have a right to appeal this matter. If that were allowed to happen, and the Court of Appeals agreed with Appellants that the claim is not compensable, and Appellants were justified and correct in their denial of the claim, then Appellants only remedy would be to look to Respondent for payment of

everything listed above. This would be an absurd result, but more practically speaking it would put Respondent in an awful position in which Respondent could now owe Appellants hundreds of thousands of dollars.

Additionally, if Justice Hewitt's Order is not reversed, and Appellants appeal reinstated, then Respondent would potentially have a res judicata argument that would preclude Appellants appeal once Respondent has reached MMI. Therefore, for the foregoing reasons, Appellants do not have an adequate remedy left within the South Carolina Workers' Compensation Act.

CONCLUSION

For all of the foregoing reasons, the Justice Hewitt Order should be reversed and Appellants Petition for Rehearing and Reinstatement should be granted.

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APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION APPELLATE PANEL

The Honorable Melody L. James, Commissioner
The Honorable Aisha Taylor, Commissioner
The Honorable Cynthia C. Dooley, Commissioner

Appellate Case No. 2024-001822
S.C. W.C.C. File No.: 1925084

PROOF OF SERVICE

I certify that I have served the *Appellants' Petition for Rehearing and Reinstatement* by forwarding via electronic mail and/or U.S. mail on November 14, 2024 addressed to attorneys of record, James G. Christmas and Robert Clyde Limehouse, III, to the South Carolina Court of Appeals, and to the South Carolina Workers' Compensation Commission at the following:

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