

The South Carolina Court of Appeals

Clayton Sims, Employee, Appellant,

v.

A&D Environmental Services, Inc., Employer, Chubb
Indemnity Insurance Company, Carrier, and Fara Third
Party Administrator, Respondents.

Appellate Case No. 2013-001796

ORDER

Clayton Sims initiated this workers' compensation action against Respondents, seeking benefits for injuries to his left shoulder and wrist allegedly resulting from a workplace accident. The single commissioner found Sims's shoulder injury was compensable, but his wrist injury was a non-compensable pre-existing condition. The single commissioner held in abeyance the determination of temporary total and partial disability benefits due to Sims, noting no payroll records were available to make such a determination. In a July 22, 2013 order, the Appellate Panel fully affirmed the single commissioner's findings of fact and conclusions of law, and noted the determination of temporary disability benefits was held in abeyance.

In a July 31, 2013 order, the single commissioner found Sims was at maximum medical improvement for his shoulder injury as of December 5, 2012, with a seven percent permanent partial disability. The single commissioner also found Respondents were entitled to a credit for all temporary total disability benefits paid to Sims after December 5, 2012.

Sims requested Appellate Panel review of the July 31, 2013 order, and filed a notice of appeal with this court from the July 22, 2013 order. Sims then filed a motion to hold this appeal in abeyance pending the Appellate Panel's review of the July 31, 2013 order, or in the alternative, to vacate his notice of appeal. Respondents filed a return, requesting the dismissal of this appeal and sanctions

requiring Sims to pay Respondents' costs associated with preparing and filing their return.

After careful consideration of the parties' filings, we dismiss this appeal. Appeals from the Workers' Compensation Commission are governed by section 1-23-380 of the South Carolina Code (Supp. 2012). *Long v. Sealed Air Corp.*, 391 S.C. 483, 486, 706 S.E.2d 34, 35 (Ct. App. 2011). Section 1-23-380 limits appellate review to an agency's "final decision." *Id.* at 486, 706 S.E.2d at 35-36. Because the Appellate Panel's July 22, 2013 order held in abeyance the determination of temporary total and partial disability benefits due to Sims, it is not a final decision. *See Bone v. U.S. Food Svc.*, 404 S.C. 67, 75, 744 S.E.2d 552, 557 (2013) (ruling if a decision leaves open questions of fact, or leaves anything to be done beyond enforcement of the decision, it is not a final decision). Furthermore, we find no reason why an appeal from the Appellate Panel's pending review of the July 31, 2013 order would not provide Sims with an adequate remedy. *See* S.C. Code Ann. § 1-23-380 (Supp. 2012) ("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."). Thus, the July 22, 2013 order is not immediately appealable.

Respondents' request for sanctions is denied.

IT IS SO ORDERED.


FOR THE COURT

Columbia, South Carolina

cc:

Joseph T. McElveen, Jr.
Daniel Barry Eller

FILED
10/30/13