

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA WORKERS' COMPENSATION
COMMISSION
T. Scott Beck, Commissioner

W.C.C. 0922546

Richard A. Hartzell, Employee,,.....Respondent,

v.

Palmetto Collision, LLC, Employer,.....Appellant,

and

the S.C. Uninsured Employers Fund.....Respondent.

RETURN TO PETITION FOR REHEARING

Palmetto Collision, LLC, respectfully requests that the Petition for Rehearing filed by Richard A. Hartzell be denied pursuant to Rule 221, S.C.A.C.R., because the Court of Appeals did not overlook or misapprehend any issue. Instead, the Court of Appeals properly concluded that the Workers' Compensation Commission erred in finding that the Claimant timely reported his alleged accident and in failing to make any conclusions of law with respect to S.C. Code Ann. § 42-15-20. In addition, despite the new argument raised in the Petition for Rehearing, the Court of Appeals has appellate jurisdiction over this appeal pursuant to S.C. Code Ann. § 1-23-380.

RECEIVED

NOV 04 2013

SC Court of Appeals

I. The Court of Appeals has appellate jurisdiction over this case.

Hartzell argues that the Court of Appeals lacks appellate jurisdiction over this appeal from the South Carolina Workers' Compensation Commission pursuant to Bone v. U.S. Food Service, 404 S.C. 67, 744 S.E.2d 552(2013). Hartzell's argument is without merit. At issue in Bone was whether a Circuit Court order remanding a case to the Workers' Compensation Commission constituted a "final judgment" in accordance with S.C. Code Ann. § 1-23-390, the statute that governs administrative appeals from the Circuit Court to the Court of Appeals.¹

However, the case *sub judice* does not involve an appeal from the Circuit Court. Therefore, the statute governing such appeals from the Circuit Court-- § 1-23-390 – and the *Bone* opinion construing that statute, are neither applicable, nor even relevant, to whether the Court of Appeals presently has appellate jurisdiction. Instead, the statute governing the present appeal is S.C. Code Ann. § 1-23-380, which, unlike § 1-23-390, does not limit the Court's appellate jurisdiction to review of "final judgments."² Section 1-23-380 plainly states 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."

Palmetto Collision respectfully contends that the Commission's March 26, 2012 Order is a "final decision" as contemplated by § 1-23-380, because it fully and finally addresses the only claim advanced by the Claimant, *i.e.*, a claim for medical

¹ According to the Bone opinion, "At issue here is the meaning of a 'final judgment' under section 1-23-390."

² Note that S.C. Code Ann. § 1-23-380 does not even use the term "final judgments."

benefits, by making a blanket award of such medical benefits.³ R. p, 17, Conclusion of Law #3; p.36, lines 6-15. There are no further claims or issues pending before the Commission and it would be entirely speculative to suggest that there will be any new claim filed in the future. If the Commission's March 26, 2012 Order is not a "final decision" simply because Hartzell may or may not file a claim for additional benefits in the future, then the Court's appellate jurisdiction and Palmetto Collision's right to due process hinges entirely on the speculative future actions of an adverse party.

What if the present appeal is dismissed, but Hartzell files no future claim and there is no further, more "final" order to appeal? Would Palmetto Collision never have any right to review the March 27, 2012 Order? Plainly, such a result would be absurd.

Palmetto Collision respectfully contends that the concept of finality under S.C. Code Ann. § 1-23-380 should be considered definite, not speculative, and relative only to the issues presently in dispute, not those which may or may not come before the Commission in the future. As such, the March 27, 2012 Order should be considered final.

Even assuming, *arguendo*, that the Commission's March 26, 2012 is merely a "preliminary" or "intermediate" agency action, Palmetto Collision respectfully contends that it is immediately reviewable pursuant to S.C. Code Ann. § 1-23-380. Under the terms of the March 26, 2012 Order, Palmetto Collision must contract with third-party medical providers to render "medical, surgical, hospital and authorized treatment" for Hartzell. No appeal of some future Commission order (which may or

³ Palmetto Collision respectfully contends that the Commission erred as a matter of law in making this award of medical benefits; however, because the notice issue under S.C. Code Ann. § 42-15-20 was dispositive, the Court of Appeals did not reach this issue.

may not ever even come into existence) could alleviate or “remedy” Palmetto Collision’s contractual obligations to authorized medical providers necessitated by the March 26, 2012 Order. Therefore, to force Palmetto Collision to contract with third-party medical providers without some immediate right of review would eliminate any semblance adequate remedy and would be otherwise violative of Palmetto Collision’s right to due process. Palmetto Collision respectfully requests that the Court interpret S.C. Code Ann. § 1-23-380 so as to preserve its constitutional and statutory right to meaningful review.

II. The Court of Appeals did not misapprehend the standard of review.

Hartzell argues that the Court of Appeals somehow misapprehended the substantial evidence standard of review in reversing the Workers’ Compensation Commission’s vague and cursory finding regarding the statutory notice requirement. After discussing the substantial evidence standard of review, the Court of Appeals properly applied that standard to the paltry evidence in the record. After reviewing, considering, and discussing this paltry evidence, including the Claimant’s testimony that he said “something to [Stallings] that I was pretty sore” and that he “mentioned that [his] back was sore,” the Court properly concluded that reasonable minds could not reach the same conclusion reached by the Commission.

Palmetto Collision respectfully contends that the Court of Appeals did not misapprehend the evidence in the record or the standard of review, but instead properly applied that standard to the evidence. Furthermore, the Court of Appeals properly applied S.C. Code Ann. § 42-15-20 so as to require Hartzell to prove, by a

preponderance of the evidence, that his alleged back problem was caused by a work-related accident. The Court of Appeals properly concluded that it was legally insufficient for Hartzell to simply complain of back pain while at work. For these reasons, Palmetto Collision respectfully contends that Hartzell's argument does not satisfy the requirements for rehearing.

Conclusion

Because the Court of Appeals did not overlook or misapprehend any issue or argument, Palmetto Collision respectfully requests that the Petition for Rehearing be denied.

Respectfully submitted,



Kirsten L. Barr
Trask & Howell, L.L.C.
P.O. Box 2167
Mt. Pleasant, SC 29465
(843) 881-4228
Attorneys for Appellant

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA WORKERS' COMPENSATION
COMMISSION
T. Scott Beck, Commissioner

Appellate Case No.: 2012-211870
Trial Court Case No. W.C.C. 0922546

Richard A. Hartzell, Employee,.....Respondent,

v.

Palmetto Collision, LLC, Employer,.....Appellant,

and

the S.C. Worker's Compensation Uninsured Employer's Fund,.....Respondent.

PROOF OF SERVICE

The undersigned hereby certifies that the above-named Respondents, Richard A. Hartzell and the S.C. Workers's Compensation Uninsured Employer's Fund, were each served with a copy of the Return to Petition for Rehearing of the Appellant this 30th day of October 2013 by depositing a copy of the same in the United States Mail, first class postage prepaid, addressed to the parties of record, as follows:

Kerry W. Koon, Esq.
147 Wappoo Creek Drive, Suite 203
Charleston, SC 29412

RECEIVED

NOV 04 2013

SC Court of Appeals

Lisa Glover, Esq.
S.C. Uninsured Employers Fund
Santee Building
100 Executive Center Dr., Ste. 101
Columbia, SC 29210



Kirsten L. Barr
Trask & Howell, L.L.C.
P.O. Box 2167
Mt. Pleasant, SC 29465
(843) 881-4228
Attorneys for Appellant