THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

WCC FILE NO. 0716408
APPELLATE CASE NO. 2013-002482

Mitzi A. Watson, Claimant ..... Appellant

v.

U.S. Food Services, Employer,
and Indemnity Insurance Co. of NA, Carrier ..... Respondents.

RESPONDENTS' REPLY TO APPELLANT'S MEMORANDUM OF APPEALABILITY

Respondents U.S. Food Services ("Employer") and Indemnity Insurance Co. of NA ("Carrier") hereby submit this Reply to Appellant's Memorandum of Appealability. Respondents maintain Appellant's appeal arises from a non-final interlocutory order that is not subject to immediate appellate review. Accordingly, Respondents contend that this appeal should be dismissed in its entirety.

Facts and Procedural Background

Appellant, Mitzi A. Watson initiated the underlying workers' compensation claim following an injury arising out of and in the course of her employment on April 25, 2007. By Order/Clincher dated March 3, 2011, Respondents specifically admitted an injury only to Appellant's back and specifically denied any injury to Appellant's right leg, left leg, left

shoulder, and psyche, as she previously alleged. As set forth in the Order/Clincher, the parties agreed "to settle and end any and all claims of the claimant for compensation benefits (money benefits) under the South Carolina Workers' Compensation Act . . . ." Respondents further agreed to be responsible for continued medical treatment/expenses for Appellant's back causally related to the work injury of April 25, 2007. In simple terms, the parties agreed to settle the indemnity portion of the claim and leave medical treatment open for Appellant's back.

In order to gain additional insight into Appellant's course of treatment, Respondents scheduled an independent medical evaluation with Dr. James Behr, a well-respected pain management physician practicing in Spartanburg, South Carolina. The appointment was to occur on June 14, 2013. Respondents note that such an evaluation was in addition to, and not in place of, the pain management treatment that Appellant was already receiving from Dr. Robert LeBlond at Upstate Medical Rehabilitation. Such treatment with Dr. LeBlond has been authorized by Respondents.

Appellant refused to attend the appointment with Dr. Behr. In response, on July 1, 2013, Respondents filed a Motion to Compel Appellant to attend the evaluation with Dr. Behr. By Order dated August 29, 2013, Commissioner Susan S. Barden granted Respondents' Motion. Appellant filed a Form 30 Request for Commission Review on September 5, 2013. On October 14, 2013, Commissioner T. Scott Beck issued an Order of the Commission, correctly determining that Appellant's appeal was interlocutory. He thus dismissed the appeal to the Full Commission.

On November 13, 2013, Appellant filed a Notice of Appeal with this Honorable Court. By letter dated November 27, 2013, addressed to Appellant's counsel, and signed by Deputy Clerk of Court V. Claire Allen, this Court requested, within ten days, a memorandum addressing

the issue of appealability. Appellant submitted a Memorandum on Appealability on December 20, 2013. Respondents hereby reply to Appellant's Memorandum and, for reasons stated in greater detail below, contend that this appeal should be dismissed.

Argument

I. The Single Commissioner's Order granting Respondents' Motion to Compel and the Full Commission's Order dismissing the appeal as interlocutory are not subject to immediate appellate review and are not properly before this Court on appeal.

The Full Commission's Order dismissing Appellant's Form 30 appeal was not a final judgment and is not subject to immediate appellate review. South Carolina and the Workers' Compensation Commission "adhere to the final judgment rule. Accordingly, subject to certain exceptions, an appeal lies only from a final judgment." Brunson v. American Koyo Bearings, 367 S.C. 161, 165, 623 S.E.2d 870, 872 (Ct. App. 2005) (citing Hagood v. Sommerville, 362 S.C. 191, 194-195, 607 S.E.2d 707, 708 (2005)); S.C. Code Ann. §§ 1-23-380 and -390; Rule 201(a) SCACR.

Appellant correctly notes in her Memorandum on Appealability that the Supreme Court has recently addressed the issue of appealability in Bone v. U.S. Foodservice, 404 S.C. 67, 744 S.E.2d 552 (2013). In Bone, the Supreme Court construed "final judgment" to mean an order that disposes of the whole subject matter of the action or terminates the action, leaving nothing to be done but to enforce what already has been determined. 404 S.C. at 83, 744 S.E.2d at 561 (citing Charlotte-Mecklenburg Hosp. Auth. v. S.C. Dep't. of Health and Envtl. Control, 387 S.C. 265, 267, 692 S.E.2d 894, 895 (2010)).

As Appellant also provided in her Memorandum, the Court in Bone further noted:

> This Court's jurisprudence is in accord with the definition of a final judgment found in Black's Law Dictionary. It defines a final judgment as "[a] court's last action that settles the rights of the parties and disposes of all issues in controversy,

except for the award of costs . . . and enforcement of the judgment." Id. at 78, 744 S.E.2d at 558-59 (citing Black's Law Dictionary 919 (9th ed. 2009)).

Respondents submit that the circumstances of the instant case do not comport with the definition of "final judgment" as set forth in Bone. The Full Commission's Order dismissing the appeal as interlocutory is not a "last action" that "settles the rights of the parties and disposes of all issues in controversy." The Full Commission's Order and the Single Commissioner's Order[1] concerned a simple Motion to Compel. This Motion dealt only with one aspect of Appellant's agreed-upon medical treatment for her back. While the parties do not desire any disputes to arise with respect to Appellant's continued medical treatment, there may be any number of additional questions that are brought forth in the future. As such, these appealed orders have not disposed of all issues in controversy.

Moreover, no rights of the parties have been settled by these orders. The Full Commission's Order dismissing the appeal as interlocutory merely leaves the Single Commissioner's Order ordering the independent medical evaluation with Dr. Behr. Appellant's rights would not be "settled" – nor even affected – by being compelled to attend an appointment with Dr. Behr. She is giving up no rights to continued medical treatment for her back.

Therefore, under the definition provided in Bone, the Full Commission's Order was not a final judgment. The Order simply determined that the Single Commissioner's order granting Respondents' motion was interlocutory. The orders of the Single Commissioner and the Full Commission were limited to authorization of a medical evaluation for Appellant's pain management treatment. All other medical benefits for Appellant's back to which she may be

1 Respondents recognize that the appealability question concerns the Full Commission's Order which has been appealed to this Court. However, given that the Full Commission's Order dismissed as interlocutory the appeal of the Single Commissioner's Order, Respondents submit that a discussion of the Single Commissioner's Order and its effect on the overall case is necessary for this Court's consideration of appealability.

entitled were not addressed in these orders. The Full Commission Order thus left other matters open, rather than disposing of the whole subject matter of the action.

Since no final judgment has been rendered, this appeal should be dismissed as interlocutory. See Hagood, 362 S.C. at 195, 607 S.E.2d at 709 (citing Tatnall v. Gardner, 350 S.C. 135, 138, 564 S.E.2d 377, 379 (Ct. App. 2002)) ("an order which does not finally end a case or prevent a final judgment from which a party may seek appellate review usually is considered an interlocutory order from which no immediate appeal is allowed.") Such a result would promote judicial efficiency and prevent multiple appeals of non-final matters/issues in this case.

II. Consideration of this appeal will result in undue delay and waste of judicial resources.

The interlocutory appeal of the Full Commission's Order is contrary to legislative policy designed to avoid waste of judicial resources and, as such, it should be dismissed. "The legislative policy expressed in section 1-23-390 is intended to avoid the undue delay and waste of judicial resources caused by interlocutory appeals." Bone, 404 S.C. at 81, 744 S.E.2d at 560.

In the instant case, the remedy sought by Appellant in this appeal is permission to refuse an *additional medical opinion* as to her current condition. Respondents have, in no way, delayed or refused to provide continued treatment with Dr. LeBlond. Appellant has been treating with Dr. LeBlond for approximately six years. Dr. Behr's evaluation was meant to provide additional insight into Appellant's current course of treatment, and such insight may ultimately lead to an improvement of Appellant's condition. Such an improvement would be beneficial to all parties involved in this matter.

Appellant cites the case Risinger v. Knight Textiles, 353 S.C. 69, 577 S.E.2d 222 (Ct. App. 2002) for the proposition that Respondents are not entitled to a second opinion as to

Appellant's course of treatment for chronic pain. Although Respondents hesitate to address the merits of this appeal in this Reply intended to address the issue of appealability, Respondents maintain that the facts of Risinger are distinguishable from the instant case.[2] In Risinger, the employer refused to provide treatment recommended by the authorized treating physician. In contrast, Respondents in this case have sought an *additional* pain management opinion and continue to provide ongoing causally-related medical treatment to Appellant. Also in Risinger, the employer sought an additional independent medical evaluation, as the physician whose treatment recommendations they sought to deny had rendered the second opinion in the case. In the instant case, the independent medical evaluation which Respondents seek would be the first with regard to Appellant's pain management treatment.

As stated above, there are still questions regarding Appellant's medical treatment to be determined. Specifically, questions concerning medical treatment/expenses "causally related" to Appellant's April 25, 2007 injury will continue to arise. Such issues may continue to come before the Commission, and numerous appeals to this Honorable Court are unwarranted. Pursuant to the holdings of Charlotte-Mecklenburg and Bone, dismissal of the instant appeal will preserve judicial resources and prevent piecemeal appeal of the various issues concerning Appellant's future medical treatment that may not have been decided in this case.

CONCLUSION

For the reasons stated herein, the orders regarding continuing treatment for Appellant's admitted injury are interlocutory and do not constitute a final adjudication of all issues in this case. Accordingly, the appeal should be dismissed.

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2 Respondents reserve a complete analysis of Risinger v. Knight Textiles – and later cases on this subject – for their appellate brief, if necessary.

January 21, 2014

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CERTIFICATE OF SERVICE

I certify that I have served one copy of the Respondents' Reply to Appellant's Memorandum on Appealability on Claimant/Appellant Mitzi Watson, by depositing a copy of it in the United States Mail, postage prepaid, on January 21, 2014, addressed to her attorney of record, Don Kamb, Esquire, Kathryn Williams, P.A., P.O. Box 10693, Greenville, SC 29603.

January 21, 2014

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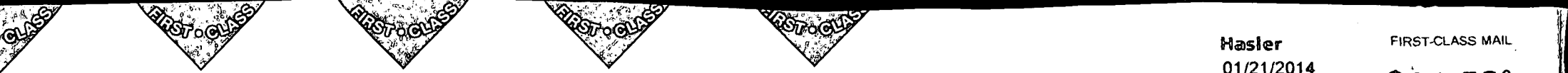

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