

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM
THE WORKERS' COMPENSATION COMMISSION

SCWCC Case No. 0716408
Court of Appeals Case No. 2013-002482

Mitzi A. Watson, Appellant,

vs.

U.S. Food Service and Indemnity Ins.
Co. of N.A. Respondents.

**RETURN TO RESPONDENTS' REPLY TO
MEMORANDUM ON APPEALABILITY**

Don Kamb
Kathryn Williams, P.A.
P.O. Box 10693
Greenville, SC 29603
(864) 235-6254
Attorney for Appellant

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JAN 31 2014

SC Court of Appeals

TABLE OF AUTHORITIES

Cases

<u>Bone v. U.S. Food Serv.</u> , 404 S.C. 67, 744 S.E.2d 552 (2013)	1
<u>Risinger v. Knight Textiles</u> , 353 S.C. 69, 577 S.E.2d 222 (Ct.App. 2002)	1

I. The Full Commission's Order dismissing the appeal before that body is not interlocutory, is immediately appealable, and is properly before this Court on appeal.

In reply to appellant's memorandum on appealability, respondents ignore the previous final March 2011 order of the Commission making an award of permanent compensation and continuing medical treatment. Though they involve matters concerning enforcement of the prior award of continuing medical treatment, respondents also argue that the current appealed orders of the Commission are not final orders subject to appeal since additional such issues may arise in the future. The difficulty with this argument is that taken to its logical conclusion, the current orders of the Commission would then never be subject to appeal since there could always be additional issues to arise. This cannot be the intent of Bone v. U.S. Food Serv., 404 S.C. 67, 744 S.E.2d 552 (2013).

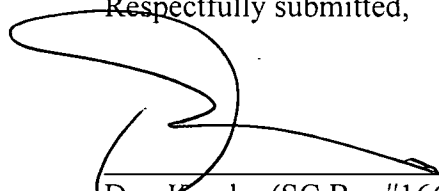
Rather, the March 2011 order of the Commission should be considered the final order settling the rights of the parties in this matter, since it resolved all the issues in the claim and left only enforcement of the order to be accomplished by the Commission. Since, the only current issue before this Court is whether the Full Commission Panel correctly determined that appellant's Form 30 appeal to the panel was interlocutory, and there is no other issue pending or left undone at the Commission level to determine the rights of the parties on this or any other issue, the current order is not interlocutory but is immediately appealable.

Respondents argue that they are simply trying to provide "an additional medical opinion" of her current condition for "additional insight into Appellant's current course of treatment." However, Risinger v. Knight Textiles, 353 S.C. 69, 577 S.E.2d 222 (Ct.App. 2002) makes clear that an employer/carrier cannot force an injured worker to submit to such an evaluation where, as

here, a final order of the Commission has been issued settling all the rights of the parties with regard to the final award and provision of continuing medical treatment. All that is left for respondents to do in this case is to continue to authorize and pay for the medical treatment recommended by the authorized, treating physician, who in this case is Dr. LeBlond.

This case should be heard by this Court and should not be remanded to the Commission, as there is nothing more for the Commission to do in this case. The issue before this Court is ripe for determination under the facts of this case.

Respectfully submitted,



Don Kamb (SC Bar #16633)
Kathryn Williams, P.A.
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Greenville, SC 29603
(864) 235-6254
Attorney for Appellant

Dated: 1/27/14

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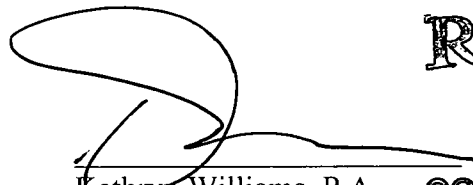
vs.

U.S. Food Service and Indemnity Ins.
Co. of N.A. Respondents.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that Appellant's RETURN TO REPLY TO MEMORANDUM ON APPEALABILITY has been served on Respondents by depositing a copy in the U.S. Mail, postage prepaid on 1/27/14, addressed to their attorney of record:

Brad B. Easterling, Esq.
Turner Padgett Graham & Laney, P.A.
P.O. Box 1509
Greenville, SC 29602



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January 27, 2014

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: **Mitzi A. Watson v. U.S. Food Service, et al.**
Appellate Case No.: 2012-212273

Dear Ms. Kitchings:

Enclosed herein please find the following items for filing in the above matter:

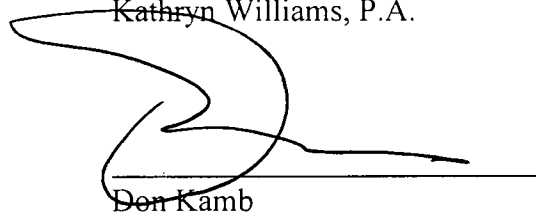
1. Appellant's Return to Respondents' Reply to Memorandum on Appealability;
2. Certificate of Service by Mail.

By copy of this letter, I am also serving Respondent's attorney with a copy of the same.

Kindest regards,

Yours truly,

Kathryn Williams, P.A.



Don Kamb

dek
Enclosure

cc: Brad B. Easterling, Esq.

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