THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Appellate Case No. 2014-001372

WCC Case No. 0726308

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AUG 0 1 2014
SC Court of Appeals

Shannon Cook, Claimant, Respondent,

v.

Spartanburg Steel Products, Inc., Defendant, Appellant

APPELLANT'S RETURN TO RESPONDENT'S MOTION TO DISMISS

Appellant, Spartanburg Steel Products, Inc., by and through its undersigned attorney, hereby submits this Return to Respondent's Motion to Dismiss. Appellant respectfully requests that this Court deny Respondent's Motion based upon the following:

1. By order dated May 20, 2014, the South Carolina Workers' Compensation Commission found Respondent sustained a compensable change of condition, such that he was entitled to additional medical treatment, including, but not limited to, lumbar spine surgery, in addition to reimbursement of any expenses associated with treatment

from Dr. Charles Kanos. This decision is a final decision of the Commission and is immediately appealable.

2. Judicial review of this Commission decision is governed by S.C. Code Ann. § 1-23-380 which provides that a party is entitled to judicial review of any final agency decision. S.C. Code Ann. § 1-23-380 (Supp. 2013), Martinez v. Spartanburg Cnty., 406 S.C. 532, 533, 753 S.E.2d 436, 436 (2014).

3. Respondent cites Bone v. U.S. Food Service, 404 S.C. 67, 744 S.E.2d 552 (2013) in his Motion to Dismiss to support his erroneous contention that the Commission's order is not a "final order." In Bone, the Supreme Court analyzed the meaning of "final judgment" under S.C. Code Ann. § 1-23-390, which permits further appellate review of a final judgment of the circuit court or the court of appeals. Appellant submits the instant case is distinguishable from Bone, as there has been no judgment by an appellate court nor has there been any order remanding the case for further proceedings. See Bone, 404 S.C. at 82, 744 S.E.2d at 561 ("the only relevant question here is whether or not the case has been remanded to the administrative agency.") However, even if the analysis in Bone were applicable to the instant case, the Commission's Decision and Order comports with the definition of "final judgment" set forth by our Supreme Court.

4. A "final judgment" is "something that finally disposes of the whole subject matter of the action, leaving nothing to be done but to execute the judgment." 404 S.C. at 83, 744 S.E.2d at 561. The Commission's May 20, 2014 Order disposes of the whole subject matter of the action, namely whether Respondent sustained a change of condition for the worse such that he was entitled to additional medical benefits. No other questions were before the Commission, and all that is left to be done is to enforce the judgment.

5. Respondent correctly notes that the Commission held in abeyance issues that were not addressed in the Commission's order, such as temporary benefits and an award of permanent benefits (Finding of Fact No. 21, Conclusion of Law No. 8). However, the decision to hold in abeyance issues that were not before the Commission does not render the decision interlocutory or non-final.

6. It is quite common in workers' compensation cases that there are multiple proceedings, each of which addresses different aspects of an injured worker's entitlement to benefits. For example, there may be one hearing before the Commission that finally determines whether an injury arose out of and in the course of employment. There may be a subsequent hearing that finally determines a claimant's entitlement to future medical and permanent disability benefits. Just because there are various issues brought before the Commission at various times does not render the decisions concerning those issues any less final. The instant case presents no different scenario. Although the Commission may anticipate there being a subsequent determination of Respondent's entitlement to additional indemnity benefits, the Commission has finally determined that Respondent sustained a change of condition for the worse and is entitled to medical benefits.

7. Just recently this honorable Court considered an appeal from the South Carolina Workers' Compensation Commission concerning a change of condition, without regard to permanent benefits. See Carter v. Verizon Wireless Southeast, 407 S.C. 641, 757 S.E.2d 528 (2014) (considering whether the claimant suffered a change of condition to her knee as opposed to suffering a condition due to natural progression of a preexisting disease and making a determination as to the claimant's entitlement to future medical treatment). This Court also recently has reviewed Commission decisions concerning

compensability without regard to permanency. See, e.g., Nicholson v. S.C. Dep't of Soc. Servs., 405 S.C. 537, 748 S.E.2d 256 (Ct. App. 2013). The instant appeal similarly leaves permanency yet to be determined, and it is reviewable at its current procedural posture.

8. Moreover, this honorable Court considered an appeal from the Commission where certain issues were held in abeyance by the Commission but other issues were considered on appeal. In Lee v. Bondex, Inc., 406 S.C. 97, 749 S.E.2d 155 (Ct. App. 2013), this Court considered whether the claimant sustained compensable injuries to his neck, left shoulder, and left arm and whether he was entitled to temporary total disability compensation. In the decision below, the Commission decided to hold in abeyance the claimant's claims for injuries to his right shoulder, right arm, and lower back. Although this Court noted the Commission should have decided the entire claim, this Court still considered the issues that had been decided by the Commission.

9. In the instant case, the Commission found Respondent had not reached maximum medical improvement and found permanency was premature. (Findings of Fact Nos. 13 and 17.) However, the Commission issued a final decision that Respondent's lumbar spine condition had worsened and that he was entitled to surgery. Considering the decision in Lee v. Bondex, Appellants submit that this Court has jurisdiction to consider this final decision of the Commission.

10. Furthermore, several of Appellant's grounds for appeal concern the fact that the Commission did not have jurisdiction to consider Respondent's change of condition claim. Appellants submit that Respondent did not meet the procedural requirements for filing an application for review on a change of condition, pursuant to S.C. Code Ann. §

42-17-90 and S.C. Code Ann. Regs. 67-602. The Commission's decision to disregard the procedural requirements set forth in S.C. Code Ann. § 42-17-90 and S.C. Code Ann. Regs. 67-602 was a final decision. In particular, its decision allowed Respondent to come before the Commission over two years after he received his initial award, a time period well outside of that set forth by the South Carolina legislature.

11. If Respondent's position were taken to its logical conclusion, parties would be unable to appeal questions of compensability until after a final permanency award. Employers and carriers would thus face substantial liability while waiting for maximum medical improvement (MMI) when the ultimate question of compensability had not been finally determined by the appellate courts. Similarly, in the instant case, Appellant is faced with providing a lumbar spine surgery and additional rehabilitative medical treatment pending a finding of MMI when it is Appellant's position that the Commission improperly exercised jurisdiction over the change of condition claim and erroneously found that Respondent's condition had worsened. Appellants contend the Supreme Court's decision in Bone does not contemplate this result. Although Bone noted the issue of compensability could be raised on appeal of the final award, there had been no findings concerning the severity of Bone's injury, whether or not she had reached MMI, or if she should be provided medical treatment. 404 S.C. at 74, 744 S.E.2d at 556. The instant case is distinguishable in that medical benefits have been ordered.

Given the reasons set forth above, Appellant respectfully requests that this Court deny Respondent's Motion to Dismiss.

Respectfully submitted,

July 30, 2014

Ashley Ann for BBE

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PROOF OF SERVICE

I certify that I have served Appellant's Return to Respondent's Motion to Dismiss on the attorney of record for Shannon Cook, by depositing a copy of it in the United States Mail, postage prepaid, on the 30th day of July, 2014 addressed to his attorney of record:

Ryan S. Montgomery
Ryan Montgomery Attorney at Law, LLC
108 Mills Avenue
Greenville, South Carolina 29605

July 30, 2014

Ashley Ann for BBE

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July 30, 2014

The Honorable Jenny Abbott Kitchings
Clerk of Court, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: Shannon W Cook vs. Spartanburg Steel Product and Hartford Insurance Company of the Midwest c/o Sedgwick Claims Management Services, Inc.
Date of Accident: September 17, 2007
WCC File No.: 0726308
Appellate Case No.: 2014-001372
Our File No.: 20194.14124
Claim No.: YDS65635

Dear Ms. Kitchings:

Please find enclosed the original and seven copies of Appellant's Return to Respondent's Motion to Dismiss in the above-referenced matter. In accordance with the Court Rules, please also find enclosed the Proof of Service.

By copy of this letter, I am serving a copy of the same on Ryan Montgomery, Esquire, Attorney for Respondent.

Please return a filed, stamped copy of Appellant's Return to Respondent's Motion to Dismiss in the self-addressed, stamped envelope enclosed.

With kindest regards, I remain

Very truly yours,

Ashley Ann for BBE

Brad B. Easterling

BBE/rhd
Enclosures
cc: Ryan Montgomery
Beth Padgett
John Nelson

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