THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
APPELLATE PANEL, WORKERS' COMPENSATION COMMISSION

W.C.C. File No. 0726308

Shannon Cook ..... Respondent,

v.

Spartanburg Steel Products, Inc. ..... Appellant.

REPLY

This reply is filed pursuant to Rule 240(f), SCACR.

I. The commission's order is not a "final order."

The commission's order is not a "final order." The terms "final order" and "final judgment" have established meanings. They refer to an order that decides all of the issues in a case and leaves nothing left for decision. See *Bone v. U.S. Food Serv.*, 404 S.C. 67, 83, 744 S.E.2d 552, 561 (2013); see also *Charlotte-Mecklenburg Hosp. Auth. v. South Carolina Dep't of Health and Envtl. Control*, 387 S.C. 265, 267, 692 S.E.2d 894, 894-95 (2010); and *Link v. Sch. Dist. of Pickens County*, 302 S.C. 1, 5 n.3, 393 S.E.2d 176, 178 n.3 (1990).

The commission's decision is not this sort of order. It expressly notes that issues are being held in abeyance. A "final order" does not hold issues in abeyance. When a final order is entered, there are no more issues in a case. A final order is the end of the road.

II. The order is comparable to a grant of partial summary judgment.

The order in question is akin to a grant of partial summary judgment. It decides some of this claim's issues, but like a grant of partial summary judgment, there are more issues on the horizon. While a partial grant of partial summary judgment is ordinarily immediately appealable, this is because a grant of partial summary judgment "involves the merits" within the meaning of the general appealability statute, which is section 14-3-330 of the South Carolina Code. See, e.g., *Nauful v. Milligan*, 258 S.C. 139, 143, 187 S.E.2d 511, 513 (1972) (involving a grant of partial summary judgment).

Section 14-3-330 does not apply to workers' compensation cases. This matter is governed by the Administrative Procedures Act. *Bone*, 404 S.C. at 84, 744 S.E.2d at 561-62.

III. The argument the appellant is making has already been rejected.

The gist of the appellant's argument is that as long as an order decides one or some of the issues in a case—again, like a grant of partial summary judgment—the order is a "final order" and is immediately appealable. That was the approach followed in *Canteen v. McLeod Reg'l Med. Ctr.*, 384 S.C. 617, 682 S.E.2d 504 (Ct. App. 2009); *Foggie v. Gen. Elec. Co.*, 376 S.C. 384, 656 S.E.2d 395 (Ct. App. 2008); and *Green v. City of Columbia*, 311 S.C. 78, 79-80, 427 S.E.2d 685, 687 (Ct. App. 1993).

These cases all trace their appealability analysis to section 14-3-330 and to law that pre-dates (and has been over-ruled by) *Bone*.

IV. None of the cases the appellant references involved appealability.

The appellant contends that the present case is comparable to recent cases in which this Court has addressed the merits of a matter and has not dismissed the appeal. See (Return

pp.3-4) (citing *Carter v. Verizon Wireless*, 407 S.C. 641, 757 S.E.2d 528 (Ct. App. 2014); *Nicholson v. South Carolina Dep't of Social Services*, 405 S.C. 537, 748 S.E.2d 256 (Ct. App. 2013); and *Lee v. Bondex, Inc.*, 406 S.C. 97, 749 S.E.2d 155 (Ct. App. 2013)). But none of these other matters even addressed the issue of appealability.

This approach has been tried before. In *Woodard v. Westvaco Corp.*, this Court attempted to discern a particular rule of appealability (relating to the denial of a demurrer) from Supreme Court decisions that did not address the topic. 315 S.C. 329, 433 S.E.2d 890 (Ct. App. 1993). In reversing this Court's decision, the Supreme Court explained that appealability had not been raised in those decisions and that "the fact that an appellate court may have decided an appeal of a particular type of order on the merits is not dispositive of whether the order is appealable when the issue of appealability was not raised." 319 S.C. 240, 242, 460 S.E.2d 392, 393 (1995) (citing *Wallace v. Interamerican Trust Co.*, 246 S.C. 563, 144 S.E.2d 813 (1965)). Because none of these cases discuss appealability, they are not informative on this point.

V. Appealability is not impacted by the argument that this claim is time-barred.

The appellant suggests that immediate appealability is impacted by its argument that the commission did not have jurisdiction over this claim. No authority is given in support of this premise.

If this were true, one would expect the jurisprudence on the appealability of demurrers or denials of motions for summary judgment to be different. The appellant is arguing that this claim is time-barred. This is functionally equivalent to a defendant's argument based on the statute of limitations or that a particular forum lacks personal

jurisdiction. But if a defendant files a motion to dismiss or a motion for summary judgment based on either of these arguments and loses, precedent dictates that neither sort of order is immediately appealable. Instead, these issues will be reviewed once there is an appealable order in the case. See *Woodard*, 319 S.C. at 242-43, 460 S.E.2d at 393-94 (denial of a motion to dismiss is not immediately appealable); *Ballenger v. Bowen*, 313 S.C. 476, 443 S.E.2d 379 (1994) (denial of summary judgment is not immediately appealable).

Conclusion

The final judgment rule is designed to prevent piecemeal appeals, and the upshot of the appellant's argument is that parties may circumvent this rule by filing limited proceedings in front of the commission—by requesting hearings on some but not all issues. This is a slippery slope argument, and like all slippery slope arguments, it can be inverted with equal force in the opposite direction. This order is *not* a final order. It expressly acknowledges that there are other issues in this case and that these issues are unresolved. This appeal should be dismissed, and that dismissal should be without prejudice.

Respectfully submitted,

August 5, 2014

Ryan S. Montgomery, Bar # 72890
108 Mills Avenue
Greenville, SC 29605
(864) 373-7333
(864) 373-7334 (facsimile)
ryan@RyanMontgomeryLaw.com

Attorney for Respondent

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
APPELLATE PANEL, WORKERS' COMPENSATION COMMISSION

W.C.C. File No. 0726308

Shannon Cook. . . . . Respondent,

v.

Spartanburg Steel Products, Inc.. . . . . Appellant.

PROOF OF SERVICE

The undersigned hereby certifies that on the date indicated below she served counsel for the Appellant with a copy of the *Reply* by mailing copies of same by United States Mail with first class postage prepaid to the following address:

Bradford B. Easterling, Esquire
McAngus Goudelock & Courie, LLC
P.O. Box 2980
Greenville, SC 29602

August 5, 2014

Cammy Ezell

RYAN MONTGOMERY
ATTORNEY AT LAW, LLC

August 5, 2014

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

Re: Shannon W. Cook vs. Spartanburg Steel Product
Case Tracking No. : 2014-001372
WCC File No.: 0726308

Dear Ms. Kitchings:

Please find enclosed for filing the original and seven (7) copies of a *Reply* in connection to the above-referenced case. I have also enclosed a proof of service of this document on counsel for the Appellant.

I am enclosing a return envelope for your convenience in returning the additional filed copy to our office. Thank you for your attention to this matter. If you need any additional information, please do not hesitate to contact me.

Yours very truly,

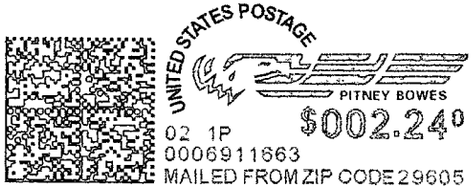
Cammy Ezell
Paralegal to Ryan S. Montgomery

Enclosure

108 MILLS AVENUE • GREENVILLE • SOUTH CAROLINA 29605 • (864) 373-7333 • (864) 373-7334 (FAX)

WWW.RYANMONTGOMERYLAW.COM

Montgomery
108 Mills
Greenville, SC 29605



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