

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SEP 22 2014

APPEAL FROM RICHLAND COUNTY
APPELLATE PANEL, WORKERS' COMPENSATION COMMISSION

SC Court of Appeals

173604

W.C.C. File No. 0726308

Shannon Cook Respondent,

v.

Spartanburg Steel Products, Inc. Appellant.

RETURN AND MOTION TO STRIKE

This return is filed pursuant to Rule 240(e), SCACR. The portion of this filing that contains the motion to strike is filed pursuant to the same general rule, which governs motions and petitions generically.

The Court should deny rehearing. The decision to dismiss this appeal was correct.

I. The appellant has filed a "petition for rehearing" – not a "motion to reinstate."

The petition cites to Rule 260 of the appellate court rules as part of its underlying authority. The implication of this citation is that the Court administratively dismissed this appeal because of a failure to comply with the appellate court rules.

This is not true. The present appeal was dismissed because the order in question is not immediately appealable. The appellant's filing is a petition for rehearing. It is *not* a motion to reinstate as contemplated by Rule 260.

II. The Court should strike the attachments to the petition.

The Court should strike the attachments to the appellant's petition. If the appellant believed that these attachments would be helpful in deciding the motion to dismiss, the attachments should have been included with the return to the motion to dismiss rather than being submitted for the first time on rehearing. The rules describe that the purpose of rehearing is to discern whether the court may have overlooked or misapprehended any point. See Rule 240(a), SCACR. It does not describe submitting new arguments or documents to the record. See, e.g., *Kennedy v. South Carolina Ret. Sys.*, 349 S.C. 531, 532, 564 S.E.2d 322 (2001) (noting that the purpose of rehearing is not to present points which lawyers overlooked or misapprehended); *Moore v. Trimmier*, 32 S.C. 511, 11 S.E. 552 (1890) (declining to consider things that were not in the original record):

III. The decision to dismiss this appeal was correct.

The central thrust of the petition is that the commission's decision is a "final decision" because it decides all of the issues that the respondent presented to the commission in his request for a hearing. It does not matter that there are more issues in the claim (as the order expressly recognizes), and it does not matter that there may be more hearings and more intermediate rulings in the claim. According to this argument, a "final decision" happens whenever the commission decides the issues that were raised in a Form 50 (a claimant's request for a hearing) or a Form 21 (a defendant's request).

The upshot of this argument is that parties get to create multiple "final decisions" by requesting hearings from the commission on selective issues. The issue in *this* hearing was whether the respondent had sustained a change of condition, but other such requests could

include a dispute about how to calculate someone's average weekly wage, whether to make an insurance carrier participate in a claim, or whether to allow an independent medical evaluation. It seems obvious that a request for a hearing on any of these would be analogous to a request for partial summary judgment on the issue in question, but the appellant seems to disagree. By the appellant's reasoning, a full commission's decision on any of these issues is going to be immediately appealable.

This view is not correct. As the *Bone* decision recognizes, one of the central features of the Administrative Procedures act was to treat administrative cases differently. *Bone v. U.S. Food Serv.*, 404 S.C. 67, 80-81, 744 S.E.2d 552, 559-560 (2013). A party can ordinarily seek an immediate appeal of a decision that grants partial summary judgment, but that is because such an order involves the merits within the meaning of the appealability statute that governs appeals in civil cases. See S.C. Code Ann. § 14-3-330.

That statute does not apply here. And while it is fair to say that this case differs from *Bone* in that this case does *not* involve a remand, it is inaccurate to say that this distinction makes any difference whatsoever. The appellant is advancing a view that would allow many kinds of piecemeal appeals. This view is wrong, and this Court was correct in rejecting it.

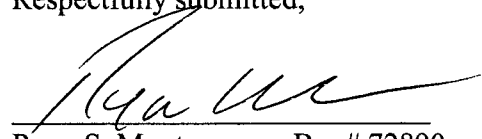
Conclusion

This order is not a final order. It expressly (and accurately) acknowledges that there are other issues in this case and that these issues are unresolved. The Court should deny the petition for rehearing, and it should strike the attachments from the appellant's filing.

/Signature page attached

17
September 19, 2014

Respectfully submitted,



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Attorney for Respondent

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Shannon Cook..... Respondent,

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PROOF OF SERVICE

The undersigned hereby certifies that on the date indicated below she served counsel for the Appellant with a copy of the Respondent's *Return and Motion to Strike* 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

September 17, 2014



Cammy Ezell

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SEP 22 2014

SC Court of Appeals



RYAN MONTGOMERY

ATTORNEY AT LAW, LLC

September 17, 2014

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211
ATTN: Stormy, Case Manager

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

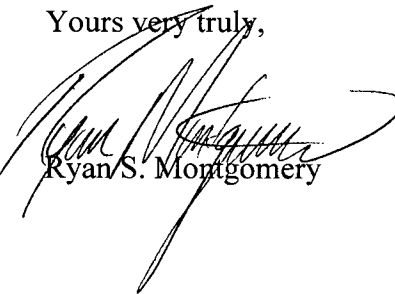
Dear Ms. Kitchings:

Enclosed please find the original and seven (7) copies of the Respondent's Return to the Appellant's Motion to Reinstate and/or For Rehearing and the Respondent's Motion to Strike along with the original and one (1) copy of the Proof of Service. As it relates to the Respondent's Motion to Strike, you will find a \$25.00 filing fee included herein.

Should you have any questions or concerns, please feel free to contact me directly.

With warmest regards,

Yours very truly,



Ryan S. Montgomery

Enclosures

Cc: Brad B. Easterling, Esquire
Helen F. Hiser, Esquire
Mr. Shannon Cook

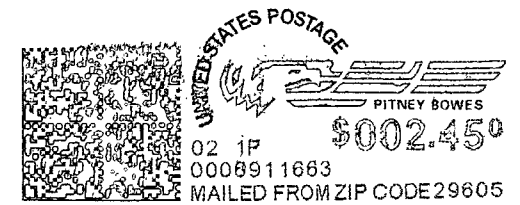
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