

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM LAURENS COUNTY
Court of Common Pleas
Judge R. Frank Addy, Jr. Circuit Court Judge

W.C.C. File No.: 0517806
Appellate Case No.: 2014-001720

Michael D. FicklinAppellant,

v.

Security Forces, Inc. and Sentry Insurance Company,Respondents.

MOTION TO DISMISS APPEAL

Respondents, Security Forces, Inc. and Sentry Insurance Company, move for an order dismissing this appeal filed by Appellant, Michael D. Ficklin on the basis that the Appellant is appealing an interlocutory order that is not immediately appealable under *Bone v. U. S. Food Service and Indemnity Insurance Company of North America*, 399 S.C. 566, 733 S.E.2d 200 (2012). Therefore, the appeal should be dismissed.

STATEMENT OF THE CASE

By way of background, the underlying workers' compensation claim involves an admitted work-related injury to the back occurring on January 29, 2005, when the claimant slipped on ice while working as a security guard. In addition to the back injury, the Appellant (Hereinafter "Claimant") alleged he sustained injuries to his right upper extremity, right lower extremity, left hip, right hip, and psychological overlay, all of which the defendants denied. A Hearing was thereafter held to determine issues as raised

on the Forms 50, 51, and 21 filed by the parties. The Hearing Commissioner ultimately awarded certain compensation for permanent partial disability to the back, as well as ongoing medical care pursuant to *Dodge v. Bruccoli, Clark, Layman, Inc.*, 514 S.E.2d 593 (S.C. Ct. App. 1999). The Single Commissioner, however, did not make a specific finding as to the date of MMI, and opted to award defendants a credit for overpayment of TTD from February 8, 2008, the date the defendants filed the Form 21. An appeal was made to the Full Commission by both parties. Per Decision and Order filed February 18, 2011, the Full Commission affirmed the Decision and Order of the Single Commissioner in its entirety. The parties thereafter each timely appealed the Full Commission Order to the Circuit Court.

In his appeal to the Circuit Court, the claimant argued that the Full Commission erred in allowing video surveillance into the record over his objection; in denying the compensability of claimant's alleged psychological injury; and in awarding less than permanent and total disability. The claimant asserted he should be entitled to lump-sum payment of benefits or lifetime allocation of his award; and that the Full Commission awarded too much credit to the defendants for overpayment of TTD. The defendants, on the other hand, maintained the Commission's determination as to credit for overpaid TTD should be affirmed with the exception that MMI should have been found as of March 16, 2007, as determined by Dr. Kanos, the authorized treating neurosurgeon; and therefore, that they were not awarded enough credit for overpaid TTD. Both parties sought a clarification as to the date of MMI.

Per Decision and Order filed June 6, 2014, Circuit Court Judge Frank R. Addy, Jr. reversed the Full Commission Appellate Panel's decision with regard to the amount of credit awarded for overpayment of TTD benefits and remanded the case to the Full Commission to determine a specific date of MMI and to determine the date to which the defendants shall be entitled to the credit awarded for overpayment of TTD benefits. Judge Addy affirmed the remainder of the Panel's decision in its entirety as it is supported

by substantial evidence in the record. The claimant appealed the Circuit Court's Decision and Order to this Court.

ARGUMENT

I. The Circuit Court Order is not a final judgment pursuant to section 1-23-390 and South Carolina case law interpreting the same.

It is well settled in South Carolina that the Administrative Procedures Act (APA) governs the review of administrative agency matters and is controlling over any provisions that conflict with its terms. *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 132, 276 S.E.2d 304, 305 (1981). The APA allows for judicial review only from *final decisions* of administrative agency decisions. S.C. Code Ann. §1-23-610(A) (1) (Supp. 2009). The Supreme Court has recently defined what constitutes a final judgment under this Code section, and in particular workers' compensation cases, and held a final judgment "must dispose of the whole subject matter of the action or terminate the action, leaving *nothing to be done but to enforce what has already been determined.*" *Bone v. U. S. Food Service and Indemnity Insurance Company of North America*, 399 S.C. 566, 733 S.E.2d 200 (2012) (emphasis added). As stated by the Supreme Court:

Today we reiterate that appeals in administrative agency matters are handled differently than appeals in other cases. The South Carolina General Assembly enacted the APA's mechanisms for review to provide uniform procedures after the exhaustion of administrative remedies; the APA's provisions are controlling in these agency matters and supersede any conflicting provisions. Thus, while appeals from the circuit court in other cases are subject to the general appealability statute of section 14-3-330, which allows appeals from interlocutory orders in certain instances (such as where the interlocutory order involves the merits), this provision and its concepts are inapplicable in matters subject to the APA.

Id. at 574, 733 S.E.2d at 204 (internal citations omitted).

The *Bone* Court went on to note that even where one issue had been decided but others remained, to allow an appeal of such an order would essentially apply an “involves the merits” analysis that the Supreme Court rejected because workers’ compensation cases are governed by the APA. The Court held that an order that did not dispose *of the entire action* was not immediately appealable.

In the present case, the Order being appealed is not a final Order under *Bone*. The Circuit Court remanded the matter to the Full Commission to determine the specific date of MMI and the date from which the defendants are entitled to a credit for overpayment of TTD since the MMI date. The Circuit Court Order did not finally conclude this case. The Order being appealed in this case does not dispose of the whole subject matter of this action; to the contrary, it returns the case to the Commission in order to further rule on issues that were improperly decided. The Order does not prevent a judgment from which an appeal might be taken later. Rather, this is the type of case the Supreme Court held to be interlocutory in *Bone v. U. S. Food Service and Indemnity Insurance Company of North America*, supra. Therefore, because the remand Order of the Circuit Court does not finally end this case, it is not immediately appealable.

CONCLUSION

Based on the foregoing, the current appeal should be dismissed as interlocutory. The Order being appealed is not a final judgment pursuant to Section 1-23-390 and therefore is not an appealable Order at this time. The defendants respectfully request that the Court hold all deadlines in abeyance pending a ruling on this Motion.

SOWELL GRAY STEPP & LAFFITTE, L.L.C.

By: 

Grady L. Beard

Bar #10190

B. Gibbs Leaphart, Jr.

Bar #72609

Post Office Box 11449

Columbia, South Carolina 29211

(803) 929-1400

Attorneys for Respondents

December 12, 2014

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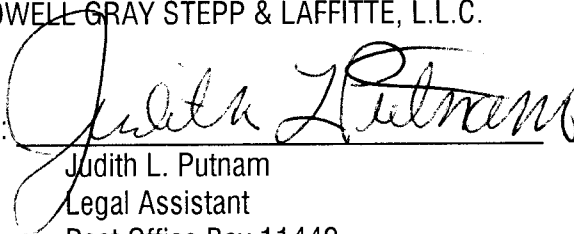
Security Forces, Inc. and Sentry Insurance Company,.....Respondents.

PROOF OF SERVICE

I certify that I have served a copy of the Motion to Dismiss Appeal on Michael D. Ficklin, by depositing a copy of it in the United States Mail, postage prepaid, addressed to his attorneys of record, Kathryn Williams, Esquire, 619 Main Street, Post Office Box 10693, Greenville SC 29603 and to The Honorable Lynn W. Lancaster, Clerk of Court, Laurens County, Post Office Box 287, 100 Hillcrest Square, Laurens, SC 29360; and, via hand delivery to Ms. Amy Bracy, Judicial Director, SCWCC, 1333 Main Street, Suite 500, Columbia, SC 29202, on December 12, 2014.

SOWELL GRAY STEPP & LAFFITTE, L.L.C.

By:


Judith L. Putnam
Legal Assistant
Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-1400

Attorneys for Respondents

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VIA HAND DELIVERY

Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29201

RE: Michael D. Ficklin v. Security Forces, Inc.
Civil Action Nos.: 2011-CP-30-00273 & 2011-CP-30-00284
WCC File No.: 0517806
Date of Accident: 01/29/05
Claim No.: 51C465814
Our File No.: 5431/8102

Appellate Case No.: 2014-001720

Dear Ms. Kitchings:

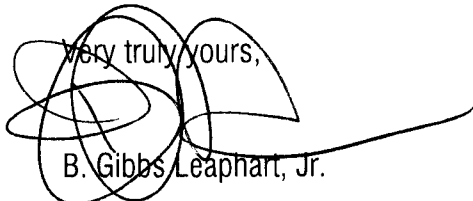
Please find enclosed an original and three copies of Respondents' Motion to Dismiss Appeal, as well as our Firm's check in the amount of \$25.00 for the filing fee. I would appreciate you filing the original and returning the clocked-in copies to our courier.

The Respondents respectfully request the Court of Appeals hold all deadlines in abeyance pending a ruling on this motion.

By copy of this letter to opposing counsel, Laurens County Clerk of Court, and the SCWCC, we are serving them with a copy of this Motion as evidenced by the Proof of Service also enclosed. Should you have any questions or need anything further, please feel free to contact my office.

With kindest personal regards, I remain

Very truly yours,



B. Gibbs Leaphart, Jr.

Enclosures

cc: Ms. Lynn W. Lancaster, Laurens County Clerk of Court (w/enclosure)
Ms. Amy Bracy, Judicial Director, SCWCC (via hand delivery)
Kathryn Williams, Esquire (w/enclosure)
Ms. Dorothy Ware (w/enclosure)(via e-mail only)
Ms. Jennifer Daniels (w/enclosure)(via e-mail only)

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