

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Gene McCaskill, Commissioner
Susan S. Barden, Commissioner
Aisha Taylor, Commissioner

WCC File No. 1202332

RECEIVED
FEB 17 2015
SC Court of Appeals

Elliot Barber, Employee, Appellant,

v.

Candies Construction Co., LLC., Employer, and Granite State Insurance Co., Carrier,
and Custom Coated Components, LLC, Uninsured Employer, and the South Carolina
Uninsured Employers' Fund, Respondents.

PROOF OF SERVICE

I certify that I have served the Appellant Brief by depositing a copy of it in the United States Mail, postage prepaid, on February 12, 2015, addressed to his attorney of record, William Thomas Bacon, IV, 200 Meeting Street, Suite 403, Charleston, South Carolina 29401, on February 12, 2015.

And

I certify that I have served the Appellant Brief by depositing a copy of it in the United States Mail, postage prepaid, on February 12, 2015, addressed to his attorney of record Lisa C. Glover, PO Box 210039, Columbia, SC 29221-0039 on February 12, 2015.

And

I certify that I have served the Appellant Brief by depositing a copy of it in the United States Mail, postage prepaid, on February 12, 2015, addressed to Earnest Candies, 401 E. 1st North Street, Summerville, SC 29483 on February 12, 2015.

And

I certify that I have served the Appellant Brief by depositing a copy of it in the United States Mail, postage prepaid, on February 12, 2015, addressed to Earnest Candies, PO Box 633, Summerville, SC 29484 on February 12, 2015.

And

I certify that I have served the Appellant Brief by depositing a copy of it in the United States Mail, postage prepaid, on February 12, 2015, addressed to the South Carolina Workers' Compensation Commission, 1333 Main Street, Columbia, SC 29202, on February 12, 2015.

February 12, 2015



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BRIEF OF APPELLANT



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STATEMENT OF ISSUES ON APPEAL

- I. WHETHER THE SOUTH CAROLINA WORKERS' COMPENSATION FULL COMMISSION ERRED AS A MATTER OF LAW WHEN IT VACATED AND REMANDED THE SINGLE COMMISSIONER'S ORDER WITHOUT ANY EXPLANATION SUPPORTING ITS DECISION

- II. WHETHER THE SOUTH CAROLINA WORKERS' COMPENSATION FULL COMMISSION ORDER IS APPEALABLE

STATEMENT OF THE CASE

This is an appeal from the Workers' Compensation Commission. The Claimant alleges he sustained a work-related injury to his neck, left upper extremity, and left shoulder as a result of a work-related accident that occurred on January 4, 2012. The Claimant filed a Form 50 – Requesting a Hearing on April 26, 2013. There were three (3) Defendants served: Custom Coated Components (“Custom”), Candies Construction, LLC (“Candies Construction”), and the South Carolina Uninsured Employers’ Fund (“SCUEF”). Candies Construction filed a Form 51 on June 7, 2013, with a general denial. SCUEF filed a Form 51 on July 26, 2013 with a general denial. Custom never responded with a Form 51.

A hearing was set before the Single Commissioner in Charleston, South Carolina on September 19, 2013. The Single Commissioner postponed the hearing in order to give Custom, represented by the owner, Earnest Candies, thirty (30) days to seek and retain legal counsel. The hearing was reset for November 11, 2013. Prior to the commencement of the hearing, the Single Commissioner asked Earnest Candies if it had retained legal counsel. Earnest Candies, on behalf of Custom only, waived legal counsel.

The hearing was held before a Single Commissioner on November 11, 2013. The Single Commissioner issued instructions for an order to be written.

On February 28, 2014, the Single Commissioner ordered that the Claimant did sustain a compensable, work-related injury to his neck, left upper extremity, and left shoulder. (R #2, Single Commissioner Order). He also found that Candies Construction was the employer at the time of the accident and responsible for any and all past and future, causally-related medical treatment. Id. Finally, he ordered that the Claimant's average weekly wage was \$440.00 with a corresponding compensation rate of \$239.48 and that the Claimant was entitled to temporary, total disability benefits from June 25, 2012 to the present and continuing. Id.

On March 18, 2014, Candies Construction filed a Form 30 – requesting commission review, to appeal the Single Commissioner's Order. In response, the Workers' Compensation Commission scheduled a hearing before an Appellate Panel on July 21, 2014. The Claimant, Candies Construction, and the SCUEF were present at this hearing. No representative from Custom was present. Following arguments by all parties present at the hearing, the Appellate Panel issued a proposed decision and Order on August 13, 2014. (R #3, Full Commission Proposed Order, ps. 1 – 2). The order indicated that the Full Commission elected to vacate and remand the case for a hearing *de novo*. Id.

On September 4, 2014, Claimant communicated via email with the South Carolina Workers' Compensation Commission via email, asking for the Full Commission to explain its decision, pursuant to S.C. Code Ann. § 1-23-350. Id. at 1; S.C. Code Ann. § 1-23-350 (2006). The Full Commission declined to comment. (R #4, Full Commission E-Mail Correspondence, ps. 1 – 2). On October 2, 2014, the Full Commission signed an order vacating the Single Commissioner's Order and remanding the case to a jurisdictional Commissioner for a hearing *de novo*. (R #1, Full Commission Order).

Claimant now appeals to this Court.

ARGUMENTS

I. The Workers' Compensation Full Commission erred as a matter of law by vacating the Single Commissioner's Decision and Order without giving any reason or explanation in support of its decision.

South Carolina administrative law provides that a final decision or order *shall* contain findings of fact, that are “accompanied by a concise and explicit statement of the underlying facts supporting the findings.” S.C. Code Ann. § 1-23-350 (2006); See Able Communications, Inc. v. S.C. Public Serv. Comm'n, 290 S.C. 409, 410, 351 S.E.2d 151 (1986); See Hill v. Jones, 255 S.C. 219, 224, 178 S.E.2d 142, 143 (1970). Here, the Full Commission Appellate Panel states only one Finding of Fact and one Conclusion of Law, and gives no concise or explicit statements supporting its decision. (R #1, Full Commission Order, p. 10). By comparison, the Single Commissioner's Order contains thirty-eight (38) Findings of Fact and seven (7) Conclusions of Law. (R #2, Single Commissioner Order, ps. 13 – 18). As a result of the Full Commission Appellate Panel's failure to give reasons supporting its decision, This Court cannot determine whether the Appellate Panel's decision is predicated upon a finding of substantial evidence or an error of law. The Full Commission Appellate Panel's decision to vacate and remand without any such explanation to support such a finding is error as a matter of law.

II. The Workers' Compensation Full Commission Order on October 2, 2014 is appealable.

Indeed, recent jurisprudence provides that an appeal from the Workers' Compensation Commission can only be proper when it is based on a final decision regarding the merits of the case. Bone v. U.S. Food Serv., 404 S.C. 67, 77, 744 S.E.2d 552, 558 (2013). However, this present case and Bone are distinguishable in the sense that the Circuit Court in Bone,

gave a concise and explicit explanation as to why the Full Commission Appellate Panel erred in its findings.

Since the Full Commission made a procedural error of law by vacating and remanding this case without any concise and specific findings to support its decision, this case is appealable. Furthermore, without following proper administrative law procedure, the Full Commission failed to give the jurisdictional Commissioner, who will hear this case on remand, any guidance to craft a decision which is satisfactory to the Full Commission Appellate Panel and/or all interested parties to this case.

If this issue is not addressed and corrected now, the Single Commissioner will spend time and resources rehearing a matter that is subject to reversal under the Administrative Procedures Act and the Court's holding in Able. See S.C. Code Ann. § 1-23-350 (2006); See Able at 410, 151. The time and resources that will be wasted creates a prejudicial burden not just to the Claimant himself, but to all interested parties and the courts.

CONCLUSION

The decision by the Full Commission Appellate Panel to vacate and remand this matter is an error of law due to the Full Commission's failure to give an explanation or statement supporting its reasoning for its decision as required by law. Furthermore, due to procedural inadequacies, the Full Commission's order is appealable.

Respectfully submitted,



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Dated: February 12, 2015