

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

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Case No. 2014-002279

SC Court of Appeals

Reginald Warner,Appellant,

v.

Gallman Personnel Services, Inc.,Employer,

and

Zurich American Insurance Company c/o
Gallagher Bassett Services, Inc., Respondents.

MOTION TO DISMISS APPEAL

This matter comes before this court on Appellant's Notice of Appeal on October 23, 2014 from the South Carolina Workers' Compensation Commission Decision and Order dated September 26, 2014. Respondents hereby move to dismiss the appeal in the above-reverenced matter pursuant to Rule 260(a) SCACR. This appeal must be dismissed because the Order appealed from is interlocutory and does not constitute a final judgment. See Montjoy v. Asten-Hill Dryer Fabrics, 316 S.C. 52, 52, 446 S.E.2d 618, 618 (1994); Long v. Sealed Air Corp., 391 S.C. 483, 487, 706 S.E.2d 34, 36 (Ct. App. 2011)

Appellant has submitted a copy of the subject Decision and Order of the South Carolina Workers' Compensation Commission. The Full Commission issued the Decision and Order on

September 26, 2014. In the Order, The Full Commission vacated the Single Commissioner's Decision and Order and remanded the matter to the Single Commissioner level for a *de novo* hearing. The Full Commission rested its decision on the Single Commissioner's failure to permit Respondents the right to cross-examine Appellant's witnesses and on the improper scope of the Single Commissioner's Decision and Order. Because this matter has been remanded for a new hearing by the Full Commission, the Decision and Order appealed from is interlocutory and it is not appealable to this court.

The Supreme Court took up this very same issue in Bone v. U.S. Food Service, Opinion No. 27278, (S.C. June 26, 2013). In Bone, the employer appealed from a circuit court order that reversed the Full Commission and remanded for further proceedings. Bone moved to dismiss that appeal on the ground the circuit court order was not immediately appealable. The Court of Appeals agreed and dismissed the appeal finding the order remanding the matter to the Commission did not constitute a "final judgment" and thus was not immediately appealable, citing to Montjoy v. Asten-Hill Dryer Fabrics, 316 S.C. 52, 52, 446 S.E.2d 618, 618 (1994) (stating our courts "have consistently held that an order of the circuit court remanding a case for additional proceedings before an administrative agency is not directly appealable") and Charlotte-Mecklenburg Hospital Authority v. South Carolina Department of Health & Environmental Control, 387 S.C. 265, 692 S.E.2d 894 (2010) (explaining that the general appealability statute, S.C. Code Ann. § 14-3-330(1) (1976), allowing appeals of intermediate orders "involving the merits," did not apply to appeals involving administrative agencies, which were governed by a different statutory scheme).

Under section 1-23-380(A) of the APA, "[a] party who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case

is entitled to judicial review" S.C. Code Ann. § 1-23-380(A) (Supp. 2007). "An agency decision which does not decide the merits of a contested case . . . is not a final agency decision subject to judicial review" S.C. Baptist Hosp. v. S.C. Dep't of Health & Env't'l Control, 291 S.C. 267, 270, 353 S.E.2d 277, 279 (1987). "A preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy." S.C. Code Ann. § 1-23-380(A).

In this case, the Single Commissioner found certain claims raised by Appellant to be compensable. The Full Commission has reversed those findings due to errors and ordered a new hearing. The Full Commission found the Single Commissioner erred as a matter of law. It is patently clear from the order of the Full Commission remanding the matter that it is not a final order. Because "there is some further act which must be done by the [Single Commissioner] prior to a determination of the rights of the parties," the Commission's Decision and Order is interlocutory and not immediately appealable. Charlotte-Mecklenburg Hosp. Auth. v. South Carolina Dept of Health & Env't'l Cont., 387 S.C. at 267, 692 S.E.2d at 894-95 (2010). Charlotte-Mecklenburg held that "judicial review may only be sought from a final decision" of administrative agencies. Id. 387 S.C. at 266, 692 S.E.2d at 894; *see also* Puniyani v. Avni Grocers, 2010 S.C. App. Unpub. LEXIS 362 (June 29, 2010) (dismissing workers' compensation appeal where the decision below had been remanded for further substantive proceedings).

For the foregoing reasons, this Court should dismiss Appellant's appeal as it is not an appeal from a final judgment. Further, this Court should award Respondent all costs associated with responding to this improper appeal. This motion conforms with Rules 240 and Rule 267, SCACR.

Respectfully submitted,

McANGUS GOUDELICK & COURIE, LLC

A handwritten signature in black ink, appearing to read "C. Barrett Burley", written over a horizontal line.

C. Barrett Burley, Bar No.:

Brett H. Bayne, Bar No.:

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Attorneys for Respondents

March 3, 2015

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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and

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PROOF OF SERVICE

I certify that I have served the Motion to Dismiss Appeal on the attorney of record for Reginald Warner, by depositing a copy of it in the United States Mail, postage prepaid, on the 2nd day of March, 2015 addressed to his attorney of record,

Stephen B. Samuels, Esquire
Samuels Law Firm
1320 Richland Street
Columbia, South Carolina 29201

March 2, 2015



C. Barrett Burley
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SC Court of Appeals

Reply To

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March 2, 2015

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SC Court of Appeals

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

RE: Reginald Warner v. Gallman Personnel Services and Zurich American
Insurance Company c/o Gallagher Bassett Services, Inc.
Date of Accident: November 29, 2012
WCC File No.: 1217409
Court of Appeals File No: 2014-002279
Our File No.: 2098.13012
Claim No.: 001627-070257-WC-01

Dear Ms. Kitchings:

Please find enclosed for filing the original and one (1) copy of a Motion to Dismiss Appeal in the above-referenced matter. Please find the original and return a clocked-in copy to me in the envelope provided for your convenience. I have enclosed my firm's check in the amount of \$25.00 for the filing fee for this request for Motion.

By copy of this letter to opposing counsel, I am advising him of my communication with the Court.

With kind regards, I am

Very truly yours,



Brett H. Bayne

BHB/jjp

Enclosures

cc: Stephen B. Samuels, Esquire, Samuels Law Firm (w/enc)