

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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MAY 04 2015

SC Court of Appeals

75877

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
COMMISSIONER GENE McCASKILL
COMMISSIONER SUSAN S. BARDEN
COMMISSIONER AISHA TAYLOR

WCC File No. 1202332
Appellate Case No. 2014-002289

Elliott 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.

MOTION TO DISMISS APPEAL

The Respondents move this Court to dismiss the appeal pursuant to Rules 201 and 240, SCACR. The order from the appellate panel of the South Carolina Workers' Compensation Commission vacating and remanding to the single commissioner is not a final decision and not immediately appealable.

FACTS

Appellant alleged he suffered injuries to his neck, left upper extremity, and left shoulder in January 2012 while employed with Respondent Candies Construction. Appellant filed a Form 50 Request for a Hearing, and a hearing was held before the single commissioner in November 2013. In February 2014, the single commissioner issued an order, finding Appellant was an employee of Respondent Candies Construction at the time of the accident, and thus, Respondent Candies Construction was responsible for temporary disability benefits and medical treatment.

Respondent Candies Construction appealed the single commissioner's order to the appellant panel. After oral argument, the appellate panel issued an order vacating the single commissioner's February 2014 order and remanding to the single commissioner for a hearing de novo. The commission scheduled the hearing before the single commissioner for December 2, 2014, but the hearing was cancelled when Appellant filed the notice of appeal to this Court.

ARGUMENT

Appellant's appeal from the commission's order vacating and remanding to the single commissioner is not a final decision and not immediately appealable.

The Administrative Procedures Act governs judicial review of decisions of the commission. S.C. Code Ann. § 1-23-380 (Supp. 2014); Bone v. U.S. Food

Serv., 404 S.C. 67, 73, 744 S.E.2d 552, 556 (2013). Section 1-23-380 of the Act limits appeals to those from a “final decision” of the commission. An order of the commission is not a final decision unless it resolves the entire action. See Price v. Peachtree Elect. Servs., Inc., 405 S.C. 455, 457, 748 S.E.2d 229, 230 (2013) (“An agency decision that does not decide the merits of a contested case is not a final agency decision subject to judicial review.”); Bone, 404 S.C. at 73, 744 S.E.2d at 556 (same); see also id. at 75, 744 S.E.2d at 557 (“A final judgment disposes of the whole subject matter of the action and terminates the particular proceeding or action, leaving nothing to be done but to enforce by execution what has been determined.” (quoting Charlotte-Mecklenburg Hosp. Auth. v. S.C. Dep’t of Health and Env’tl Control, 387 S.C. 265, 267, 692 S.E.2d 894, 895 (2010))). In Peachtree, the supreme court held an order from the appellate panel remanding the case to the single commission for further determination of benefits was not immediately appealable under section 1-23-380. 405 S.C. at 457, 748 S.E.2d at 230.

Here, similar to Peachtree, the order on appeal is not a final decision under section 1-23-380 and not immediately appealable because the appellate panel vacated the single commissioner’s order and remanded for a hearing de novo. See id. (“An agency decision that does not decide the merits of a contested case is not a

final agency decision subject to judicial review.”). Accordingly, this appeal should be dismissed.

CONCLUSION

Based on the foregoing argument, Respondents respectfully requests the Court dismiss the appeal as not immediately appealable.

Respectfully Submitted,

COLLINS & LACY, P.C.

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RESPONDENTS CANDIES
CONSTRUCTION CO., LLC AND
GRANITE STATE INSURANCE
CO.

Columbia, South Carolina
May 4, 2015

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Employers' Fund, Respondents.

PROOF OF SERVICE


Counsel for Respondents Candies Construction Co., LLC and Granite
State Insurance Co. certifies that she has served the Respondents' Candies
Construction Co., LLC and Granite State Insurance Co. Motion to Dismiss on

all parties by depositing a copy of it in the United States Mail, postage prepaid, on May 4, 2015, addressed to the following attorneys of record:

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May 4, 2015
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ATTORNEYS FOR RESPONDENTS
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**PROOF OF SERVICE-INITIAL
BRIEF**



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Senior Paralegal

May 4, 2015

VIA HAND DELIVERY

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

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SC Court of Appeals

Re: Elliott Barber v. Candies Construction/Custom Components
WCC No. 1202332
Appellate Case No. 2014-002289
C&L File No. 000001-81742

Dear Ms. Kitchings:

Please find enclosed the original and seven copies of Respondents' Motion to Dismiss the Appeal in connection with the above referenced matter. Also enclosed is our firm's check in the amount of \$25.00, made payable to S.C. Court of Appeals, for the filing fee of the motion. Please check a copy and return it with our courier.

By copy of this letter to counsel of record, we are serving same on them.

With warmest regards, I remain

Sincerely,

A handwritten signature in black ink, appearing to read "Monica McGee".

Monica M. McGee
Senior Paralegal

/mmm

Enclosures

cc: Lisa C. Glover, Attorney, State Accident Fund
Ryan T. LeBlanc, Esquire, Joye Law Firm, LLP