

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 VIRGIL A. HOFF, Employee,)
)
 Respondent,)
)
 -vs.-)
)
 MEAD WESTVACO, Self-Insured)
 Employer, and SAFETY NATIONAL)
 INSURANCE, Carrier,)
)
 Petitioner.)

COURT OF COMMON PLEAS
 NINTH JUDICIAL CIRCUIT
 CASE NO.: 2010-CP-10-6041

ORDER

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MAY 28 2015

SC Court of Appeals

FILED
 2015 APR -8 PM 4:25
 JULIE J. ARISTRONG
 CLERK OF COURT

Presiding Judge: Hon. Deadra L. Jefferson
 Petitioner's Attorney: Kristen Barr, Esquire
 Respondent's Attorney: J. Kevin Holmes, Esquire
 Date of Hearing: January 8, 2015
 Court Reporter: Pamela E. Green

This Petition for Judicial Review from the Workers' Compensation Commission came to be heard before me in Charleston, South Carolina on January 8, 2015. Present at the hearing were the Petitioner's attorney, Kristen Barr, of Trask & Howell, L.L.C., as well as the Respondent's attorney, J. Kevin Holmes, of the Steinberg Law Firm, L.L.P. The purpose of the hearing was to review the remand decision of the Appellate Panel filed on October 11, 2013.

The Court file contains the Petitioner's brief, Respondent's brief, Petitioner's Reply brief, and the Record on Appeal submitted by the Petitioner. After considering the record and arguments of counsel, it is the ruling of the Court that the remand decision of the Appellate Panel is affirmed.

1/8/4
 [Signature]

The Respondent filed a claim for benefits under the Workers' Compensation Act on June 9, 2009 alleging he sustained a compensable hearing loss. The Petitioner denied the claim and raised the time for giving notice of the claim and for the filing a claim under §§ 42-15-20 and 42-15-40, S.C. Code Anno., 1976 as amended, as affirmative defenses. Commissioner Williams heard the claim and issued his Decision and Order on October 29, 2009 finding and ruling the claim was compensable.

The Petitioner sought review and the Appellate Panel reversed Commissioner Williams' decision on July 2, 2010 ruling the claim was time barred. The Respondent filed a Petition for Judicial Review of the Appellate Panel's ruling the claim was time barred. Judge Nicholson reversed the decision of the Appellate Panel ruling the claim was time barred on January 15, 2013 as being affected by an error of law and remanded the claim to the Commission. The Petitioner filed a Notice of Appeal to the Court of Appeals but the appeal was dismissed as interlocutory.

On remand the Appellate Panel did what it was instructed to do by Judge Nicholson. The Appellate Panel applied Judge Nicholson's rulings of law and reinstated the Decision of Commissioner Williams on October 11, 2013. The Petitioner filed for Judicial Review of the remand decision of the Appellate Panel on November 11, 2013.

Grounds and exceptions 7, 8, 9, 12, 13, 14, 15, 16, 19, 20, 21, and 22 ask this Court to reverse Judge Nicholson's rulings of law as to the applicable statute of

2 2014
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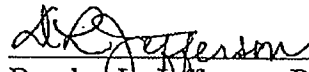
limitations. One Circuit Court Judge, however, does not have the authority to overrule another. See: Enoree Baptist Church v. Fletcher, 287 S.C. 602, 340 S.E.2d 546 (1986); Samonsen v. CGD, Inc., 377 S.C. 442, 661 S.E.2d 81 (2008). The Petitioner's exceptions are preserved and the Petitioner can now appeal Judge Nicholson's rulings of law concerning the statute of limitations to the Court of Appeals.

The Petitioner further argued that "the findings of fact made by Judge Nicholson and entered by the Commission as instructed, are arbitrary, capricious, and otherwise not supported by substantial evidence in the record..." (Petitioner's Reply Brief, page 1). During argument of the Petition the Court asked Petitioner's counsel to identify the findings of fact which were not previously argued before Judge Nicholson. The Petitioner did not identify any but, rather, argued a denial of due process because the Appellate Panel was not permitted to make new or additional findings of fact on remand. In its remand decision the Appellate Panel stated it had no authority "to address the remaining errors and exceptions raised by [the Petitioner], which were not previously addressed by the Appellate Panel because the Commission's conclusion regarding the statute of limitations was dispositive." (Order of Appellate Panel dated 10/11/13). To the extent the Petitioner asks this Court to reverse Judge Nicholson's findings of fact, this Court has no authority to review Judge Nicholson's findings of fact or to review his rulings of law. A review of the record indicates the Commission did what Judge Nicholson instructed it to do on remand. Whether Judge Nicholson exceeded his authority

when he remanded the claim to the Commission is also an issue preserved for appeal to the Court of Appeals.

IT IS HEREBY ORDERED that the remand decision of the Appellate Panel filed on November 11, 2013 is affirmed. The Petitioner's ground and exceptions arising from Judge Nicholson's findings of fact or rulings of law are preserved for appeal to the Court of Appeals.

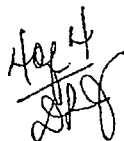
AND IT IS SO ORDERED.



Deadra L. Jefferson, Presiding Judge

Charleston, South Carolina

4th day of April, 2015.

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Legare Boulware

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MOTIONS ARE SCHEDULED COURTROOM 3E WITH JUDGE JEFFERSON PRESIDING.

IF YOU HAVE QUESTIONS PLEASE CONTACT CAROLINE LEONARD AT:
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