

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

WCC Case No. 0726308

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AUG 10 2015

S.C. Supreme Court

Shannon Cook, Claimant, Respondent,

v.

Spartanburg Steel Products, Inc., Defendant, Petitioner.

RETURN IN OPPOSITION TO RESPONDENT'S
MOTION TO DETERMINE AUTOMATIC STAY

Pursuant to Rule 240, SCACR, Petitioner Spartanburg Steel Products, Inc. hereby opposes Respondent Shannon Cook's Motion to Determine Automatic Stay ("Motion"), which is no more than a back-door attempt to appeal an interlocutory order of the South Carolina Workers' Compensation Commission. In addition, Respondent's arguments to this Court and before the Commission are inconsistent, misrepresent the facts, and should be rejected. Furthermore, Petitioner disputes Respondent's characterization of the status of this proceeding before the Commission.

First, Respondent initially argued to the Court of Appeals and to this Court that determination of Temporary Total Disability ("TTD") benefits was premature and should be held in abeyance. (Att. A, pp. 1-2) (Att. B, p. 3). Admittedly, in the proceeding he

initiated before the Commission by way of a Form 50, Request for Hearing dated March 17, 2015, he sought a determination and award of TTD, as well as “additional medical examination and treatment.” (Resp. Att. 3). Petitioner properly moved to stay those proceedings pending the outcome of the Petition pending before this Court.

In his opposition to Petitioner’s Motion to Stay, Respondent admitted that “[p]art of the impetus for the Claimant’s Form 50 is that the employer has refused to provide the surgery ordered by Dr. Kanos.” Additionally, in his opposition to Petitioner’s Motion to Stay, Respondent threatened that, although he had “not filed a motion to compel as of this date, ... if this hearing is postponed, [Respondent] will do so immediately and will seek sanctions ...” (Resp. Att. 5, p. 1). Subsequently, Respondent filed his Motion to Compel, raising the same allegations of refusal to provide medical care that he raised in his opposition to Petitioner’s Motion to Stay. (Resp. Att 5, p. 4).

The Commission properly granted Petitioner’s Motion to Stay, rejecting Respondent’s arguments including his assertions regarding denial of treatment. (Resp. Att. 7). “[A]n order granting a stay is not immediately appealable.” Edwards v. SunCom, 369 S.C. 91, 95, 631 S.E.2d 529, 531 (2006). Respondent’s backdoor attempt to appeal a clearly non-final decision on a motion should be summarily dismissed. This Court should deny Respondent’s Motion and dismiss his back-door attempt to file an impermissible interlocutory appeal.

Furthermore, Respondent’s attempt to fabricate a compliance issue must be rejected. The only reason surgery has not been authorized yet is because the first time Respondent demanded surgery was in his opposition to Petitioner’s Motion to Stay and in his subsequent Motion to Compel. For Respondent to raise and threaten issues of

noncompliance and penalties over a treatment option he has not even requested since the Commission issued its May 20, 2014 Decision is disingenuous at best, and should be rejected by this Court.

Finally, at the same time that Respondent asserts the Commission retained jurisdiction to determine the issues raised in his Motion to Compel, filed June 29, 2015, (Resp. Att. 5), citing Johnson v. Sonoco Prods. Co., 381 S.C. 172, 176, 672 S.E.2d 567, 570 (2009) (holding the lower tribunal “retained authority to compel”), he rejects the Commission’s resolution of his Motion to Compel by filing what can only be characterized as an impermissible interlocutory appeal of the Commission’s orders denying his motion and granting Petitioner’s. This is not simply a case of Respondent choosing to file his Motion to Compel with this Court pursuant to State v. Cooper, 342 S.C. 389, 398, 536 S.E.2d 870, 875-76 (2000). Instead, Respondent took his first shot with the Commission and, being displeased with the outcome, is now trying his hand with this Court by filing his Motion. Such gamesmanship should be rejected.

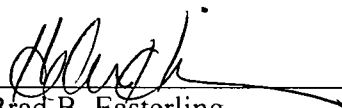
The Commission, fully aware of what it did and did not order, granted Petitioner’s Motion to Stay Proceedings and denied Respondent’s Motion to Compel. Indeed, in Respondent’s Opposition to Defendant’s Motion to Stay Proceedings, he specifically noted that Commissioner Avery B. Wilkerson, Jr. was on the Appellate Panel that decided this appeal at the Full Commission level. (Resp. Att. 1, p. 17) (Resp. Att. 5, p. 2). Commissioner Wilkerson both granted Respondent’s Motion to Stay on July 17, 2015 and denied Respondents’ Motion to Compel on July 15, 2015. (Resp. Att. 7). This Court should deny Respondent’s Motion and dismiss his back-door attempt to file an impermissible interlocutory appeal.

CONCLUSION

For all the reasons stated herein, Petitioner urges this Court to deny Respondent's Motion and dismiss his attempt to file an impermissible interlocutory appeal of the Commission's July 15, 2015 and July 17, 2015 motions orders.

Respectfully submitted,
McANGUS GOUDELOCK & COURIE, LLC

August 6, 2015



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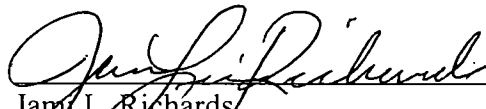
Spartanburg Steel Products, Inc., Defendant, Petitioner.

PROOF OF SERVICE

I certify that on the 6th day of August 2015, I served the Petitioner's **Return in Opposition to Respondent's Motion to Determine Automatic Stay** on Shannon Cook by depositing a copy of it in the United States Mail, postage prepaid, addressed to his attorneys of record:

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