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S.C. Supreme Court

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
APPELLATE PANEL, WORKERS' COMPENSATION COMMISSION

(S.C. Ct. App. Orders dated Aug. 29, 2014 and March 19, 2015)

Shannon Cook . . . . Respondent,

v.

Spartanburg Steel Products, Inc. Petitioner.

REPLY

This reply is filed pursuant to 240(e) of the South Carolina Appellate Court Rules, which governs motions and petitions generally.

The Court should grant Mr. Cook's motion and issue an order explaining three things, none of which are legitimately debatable. First, the Court should instruct—as section 42-17-60 mandates—that an automatic stay does not apply to an award of medical treatment in a workers' compensation case. Second, the Court should hold that Spartanburg Steel Products must provide Mr. Cook's medical care during this appeal. This conclusion follows from a proper application of section 42-17-60 to the circumstances of this case. Finally, the Court should instruct the commission that it must immediately hear disputes about delayed medical treatment even though this appeal is pending. With the utmost respect, Mr. Cook does not understand the arguments Spartanburg Steel Products offers against his motion.

A. It is odd that rather than admit its responsibility to provide Mr. Cook's surgery, Spartanburg Steel Products opposes the present motion and insists that the right way for the commission to treat a claim of delayed medical treatment is to wait.

Unless Mr. Cook is misreading the return, Spartanburg Steel Products never admits its responsibility for providing Mr. Cook's surgery. This would have been the easiest way to answer the medical part of the hearing request (the Form 50) that Mr. Cook filed in March, and it would have the added benefit of obviating the need for this motion as well as the motion to compel Mr. Cook filed at the commission. The surgery was ordered over a year ago. This issue should not necessitate adversarial proceedings, yet it apparently does.

Spartanburg Steel also never explains why a stay is the appropriate course for the commission to take in circumstances like this. It never articulates why a stay is the proper way to treat a claimant's allegation of delayed medical treatment.

This omission seems glaringly strange when the statutory law is so clear. Section 42-17-60 provides that an appeal does not stay a workers' compensation order, and section 42-3-175 discusses what the commission should do when a claimant brings an action to enforce an order authorizing benefits. These statutes are empty guarantees if an employer can avoid their application by asking for (and obtaining) an erroneous decision from the commission refusing to even *hear* a claim that medical treatment is not being delivered.

B. It is odd that Spartanburg Steel Products describes this motion as a premature appeal when the commission's order—which is an order refusing to decide whether medical treatment is being delayed—would plainly fall within section 1-23-380.

Spartanburg Steel calls Mr. Cook's motion an improper attempt to prematurely appeal the commission's decision denying his motion to compel, but section 1-23-380

provides that intermediate decisions from an administrative agency *are* immediately appealable if review of the agency's final decision would not provide an adequate remedy. Allegations of delayed medical treatment would seem to fit this category. The statutory guarantee that an appeal will not impact someone's medical care would be moot if an employer could avoid it by stiff-arming the injured worker.

But even though section 1-23-280 would allow the commission's order to be appealed immediately, there is no need for the Court to consider the point. The motion Mr. Cook filed in this Court is *not* an appeal. As *State v. Cooper* quite plainly recognizes, the appellate court has the power to resolve a dispute about whether the automatic stay applies. 342 S.C. 389, 398, 536 S.E.2d 870, 875-76 (2000). There must be such a dispute here—it is difficult to reach any other conclusion given the filings on this motion as well as the filings below. Mr. Cook wants his employer to authorize treatment ordered by Dr. Kanos. The employer says the commission should not hear this request until after this Court rules.

Spartanburg Steel attaches significance to the fact that Mr. Cook asked the commission for relief before filing a motion in this Court. Of course Mr. Cook did so. This procedure is not meaningfully different from the two-step process litigants must follow when they *seek* supersedeas; Rule 241(d) requires a motion to go first to the lower court before being filed in an appellate court. As long as Mr. Cook is using a proper vehicle to seek relief from this Court (and he believes he is), there is nothing inappropriate about Mr. Cook asking the commission to follow the law before filing this motion. Spartanburg Steel says this is gamesmanship, but it never explains why.

C. Mr. Cook disagrees with the suggestion that he has not presented the facts honestly.

Spartanburg Steel chose to appeal rather than wait for the commission to issue a final order under section 1-23-380, and Spartanburg Steel apparently would rather oppose any further proceedings in front of the commission than provide the surgery the commission authorized for Mr. Cook in May of 2014. Mr. Cook was requesting the commission-ordered medical treatment before the appellate panel even issued its decision. See **Exhibit 1**. He did not wait to demand medical care, as Spartanburg Steel claims he did. Tellingly, Spartanburg Steel is using the pendency of its premature appeal to *impair* this case's progress. This is why the Administrative Procedures Act disfavors piecemeal appeals.

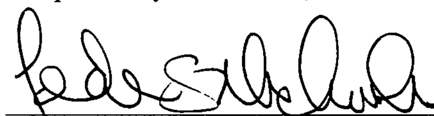
These positions are either correct under the law or they are not. With the utmost respect, Mr. Cook believes he has recited the facts correctly.

CONCLUSION

The Court should instruct the commission that Spartanburg Steel Products must provide Mr. Cook's medical care during this appeal and that the commission must immediately hear disputes about delayed medical treatment.

Respectfully submitted,

August 13, 2015



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Attorney for Respondent

Exhibit 1

RYAN MONTGOMERY

ATTORNEY AT LAW, LLC

May 21, 2014

Brad B. Easterling, Esq.
McAngus, Goudelock & Courie
PO Box 2980
Greenville, SC 29602-2980

Re: Claimant: Shannon Cook
Employer: Spartanburg Steel Products, Inc.
Carrier: Shannon Cook
WCC File No.:0726308
Claim No.: YDS656635C
D.O.L.: 9/17/2007

Dear Brad:

This letter will follow our conversation outside of the building in Columbia following the appellate argument before the Full Commission. In that conversation, and please correct me if I am wrong, you indicated that if the Full Commission affirmed, then you planned to appeal to the Court of Appeals.

I believe any appeal would be interlocutory based upon my reading of *Bone v. U.S. Food Services,* which adopted the definition of final judgment from Black's Law Dictionary as a "court's last action that settles the rights of the parties and disposes of all issues in controversy". The singed Order from the Full Commission reserves on many issues, including, but not limited to, TTD, additional permanency, etc. and even goes onto to state, *"[a]ll other issues not addressed herein are hereby held in abeyance pending a final order of the Commission"*. See Conclusion of Law 4. Based upon this, I'd ask that the Employer provide medical treatment as indicated in the Order versus an appeal.

Yours very truly,

Ryan S. Montgomery

Cc: Mr. Shannon Cook

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PROOF OF SERVICE

The undersigned hereby certifies that on the date indicated below she served counsel for the Petitioner with a copy of the *Reply to Return to Motion to Determine Automatic Stay* by mailing copies of the same by United States Mail with first class postage prepaid to the following addresses:

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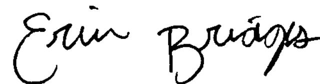

August 13, 2015

Erin Bridges
BLUESTEIN, NICHOLS, THOMPSON
& DELGADO, LLC