

The South Carolina Court of Appeals

Ricky Kneece, Respondent,

v.

Kneece Farms, Employer, and Legion in Liquidation and
the South Carolina Property and Casualty Insurance
Guaranty Association, Appellants.

Appellate Case No. 2014-001258

ORDER

In this worker's compensation action, Kneece Farms and Legion in Liquidation and the South Carolina Property and Casualty Guaranty Association (Appellants) appeal the circuit court's order reversing the Appellate Panel of the South Carolina Workers' Compensation Commission's determination and finding claimant Ricky Kneece was totally disabled accompanied by physical brain injury pursuant to section 42-9-10(C) of the South Carolina Code (2015). Appellants also assert the circuit court erred in affirming the Commission's rulings that Kneece was entitled to reimbursement of past medical expenses and lifetime medical expenses and that he had sustained compensable injuries by accident to his zygomatic arch, thyroid, and finger and scarring.

The Appellate Panel reversed the single commissioner's determination Kneece was entitled to lifetime benefits pursuant to section 42-9-10(C) and held Kneece had sustained an injury pursuant to South Carolina Regulation 67-1101 (2012), which sets out the compensation rates for the total and partial loss of parts of the body. The Appellate Panel remanded the claim to the single commissioner for a decision with regard to permanency. It affirmed the single commissioner's other findings. Both parties immediately appealed to the circuit court, which affirmed in part and reversed in part the Appellate Panel's order.

We find the Appellate Panel's order was not immediately appealable to the circuit court. "An appellate court may determine the question of appealability of a decision from a lower court as a matter of law. Even if not raised by the parties, this court may address the issue of appealability *ex mero motu*." *Levi v. N. Anderson Cty. EMS*, 409 S.C. 374, 379, 762 S.E.2d 44, 47 (Ct. App. 2014) (internal quotation marks and citations omitted).

The Administrative Procedures Act provides, "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 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 Section 1-23-380 (Supp. 2015). "An agency decision which does not decide the merits of a contested case is not a final agency decision subject to judicial review." *Bone v. U.S. Food Serv.*, 404 S.C. 67, 73, 744 S.E.2d 552, 556 (2013) (quoting *S.C. Baptist Hosp. v. S.C. Dep't of Health & Env'tl. Control*, 291 S.C. 267, 270, 353 S.E.2d 277, 279 (1987) (ellipses omitted)). "A final judgment disposes of the whole subject matter of the action or terminates the particular proceeding or action, leaving nothing to be done but to enforce by execution what has been determined." *Id.* at 75, 744 S.E.2d at 557 (quoting *Charlotte-Mecklenburg Hosp. Auth. v. S.C. Dep't of Health & Env'tl Control*, 387 S.C. 265, 267, 692 S.E.2d 894, 895 (2010)).

In *Price v. Peachtree Electrical Services, Inc.*, 405 S.C. 455, 456-57, 748 S.E.2d 229, 230 (2013), our supreme court found an order of the appellate panel remanding the case to the single commissioner for further determination of benefits was not immediately appealable.

Here, as in *Price*, the Appellate Panel remanded the case to the single commissioner for a determination of benefits. Therefore, the Appellate Panel's order was not a final decision. The parties would be able to receive an adequate remedy after a final decision is made. Thus, this order was not immediately appealable to the circuit court.

The order of the circuit court, therefore, is VACATED and the matter REMANDED for proceedings consistent with this order.

Thomas C. Hoff A.C.J.

H. Bruce Williams J.

Paul D. Thomas J.

Columbia, South Carolina

cc:

Mark Davis Cauthen, Esquire
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Scott A. Elliott, Esquire

FILED

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