

The South Carolina Court of Appeals

Clarence Winfrey, Employee, Claimant, Respondent,

v.

Archway Services, Inc., Employer, and American Fire &
Casualty Insurance Company c/o Liberty Mutual Group,
Carrier, Appellants.

Appellate Case No. 2014-001788

ORDER

Respondent moves for an ex parte protective order directing Appellants to cancel a deposition set for August 1, 2016. Respondent further asks this court to enforce its order dated March 18, 2016, and "for such other and further relief in reference to discovery or any further action during the pendency of the appeal" In the March 18 order, this court granted Respondent's motion to compel medical care based on Respondent's assertions that any delay in care could result in "an absolutely devastating situation for [Respondent], up to and including his death." We rejected Appellants' position that depositions were necessary at that time to establish whether the recommended treatment was causally related to Respondent's heart condition "given that Respondent's surgeon recommended valve repair surgery within seven days of January 5, 2016." However, we noted nothing prevented Appellants from raising the causality issue after Respondent received the recommended treatment.

We note it has now been four months since we granted Respondent's request to compel medical care, which if delayed could have resulted in Respondent's death. We additionally recognize that exhibits filed with the myriad of motions in this case demonstrate the surgery has been approved "to go forward from the carrier's perspective" and Appellants are not working to actively impede Respondent's ability to undergo the recommended treatment. *See* Emails attached to Respondent's "Memorandum in Support of Emergency Motion for an Order of

Protection Postponing the Deposition of Dr. John Ikonomidis set for July 11, 2016 Until Further Order of the Court and Further to a Memorandum Schedule as to Whether or not the Defendants the Right to take Depositions During the Pendency of the Appeal(s)." Furthermore, we note the Workers' Compensation Commission Appellate Panel affirmed the Single Commissioner's ruling that "the [Appellants] reserve the right to contest the compensability of any injury or condition opined to be related to the injury involving any bodily part, member, organ or system[.]"

This court's March 18, 2016 order was not intended to convey the notion Appellants would be prevented from challenging the causality of Respondent's recommended surgery. The order was granted based on Respondent's assertions that Respondent's "condition [was] extremely delicate" and any delay in surgery could result in "an absolutely devastating situation for [Respondent], up to and including his death." Questions regarding the causality of Respondent's mitral valve defect and compensability of the attendant surgery are not part of the subject appeal. As we have noted, questions regarding those issues are not proper before this court and are directed to the Workers' Compensation Commission. Therefore, in accordance with this court's March 18, 2016 order, Respondent's surgery is entitled to go forth and Appellants are entitled to contest the compensability of the surgery. Accordingly, Respondent's motion for an ex parte order of protection directing Appellants to cancel the deposition scheduled for August 1, 2016 is denied.



FOR THE COURT

Columbia, South Carolina

FILED

July 29, 2016

cc:

Brett Harris Bayne, Esquire
Preston F. McDaniel, Esquire
Amy Bracy