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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SEP 30 2016

SC Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
Commissioner Gene McCaskill

WCC File No. 1410083
Appellate Case No. 2016-001457

Terry McCall, Employee,Appellant.

v.

Trojan Labor/Hire Quest, Employer,Respondent.

MOTION TO DISMISS APPEAL

The Respondent moves this Court to dismiss the appeal pursuant to Rules 201 and 240, SCACR. Appellant has directly appealed the order from the single commissioner to the Court of Appeals. Petitioner has not appealed the single commissioner's order to the appellate panel of the South Carolina Workers' Compensation Commission. Accordingly, the single commissioner's order is not a final decision and is not immediately appealable.

FACTS

Appellant alleged he suffered injuries to his neck, right shoulder, back, right hand, wrist, and a hernia in July 2014 when he tripped over a wire and fell while employed with Respondent Trojan Labor/Hire Quest. Appellant filed a Form 50 Request for a Hearing. Respondent filed a Form 51 denying the claim in its entirety, specifically denying Appellant suffered an injury by accident arising out of the course and scope of his employment and noting that Appellant had a very long history of treatment for all of the alleged body parts noted on the Form 50.

A hearing was set before Commissioner Wilkerson in Greenville, South Carolina on April 1, 2015. The Commission issued an Order on April 8, 2015, returning the file to the general files to allow the Claimant additional time to retain counsel and allowing the carrier to file a Form 19 seeking closure of the claim in the event the Claimant failed to pursue benefits within sixty (60) days.

On April 22, 2015, Appellant advised the Commission he was requesting another hearing. Following Appellant's transfer from Greenville, South Carolina to Broad River Correctional Institute, a hearing was set for

August 28, 2015 before Commissioner McCaskill. Following the hearing, the record in the case was closed. Appellant filed a series of motions following the hearing.

On February 24, 2016, the single commission issued an order, denying Appellant's request for benefits under the Act with prejudice. Appellant subsequently filed this appeal on July 8, 2016.

Appellant has received various correspondences from the Court detailing deficiencies in his filings, including failure to accompany his notice of appeal by the order(s) and/or judgment(s). On July 20, 2016, Appellant filed with the Court Commissioner McCaskill's order denying benefits. To date, Appellant has not filed a transcript of the hearing before the commissioner.

ARGUMENT

Appellant's appeal from the single commissioner's order denying benefits is not a final decision and not immediately appealable.

The Administrative Procedures Act governs judicial review of decisions of the commission. S.C. Code Ann. § 1-23-380 (Supp. 2014); Bone v. U.S. Food Serv., 404 S.C. 67, 73, 744 S.E.2d 552, 556 (2013). Section 1-23-380 of the Act limits appeals to those from a "final decision" of the

commission. A decision of a single commissioner cannot be directly appealed without first being reviewed by the full commission. See Janhrette v. Union Camp Paper Corp, 293 S.C. 59, 358 S.E.2d 704 (1987). Section 42-17-60 of the South Carolina Code provides that an award or denial of award by the full commission is appealable to the Court of Appeals. S.C. Code Ann. § 42-17-60 (2015).

Appellant has appealed the order of the single commissioner. Appellant has failed to file any appeal to the full commission, or challenge any appeal by the full commission to this Court. Because the order of the single commissioner is not a final order, Appellant's appeal is improper.

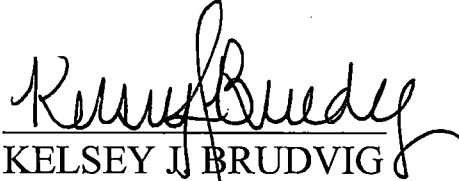
CONCLUSION

Based on the foregoing argument, Respondent respectfully requests the Court dismiss the appeal as not immediately appealable.

[SIGNATURE PAGE FOLLOWS]

Respectfully submitted,

COLLINS & LACY, P.C.



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ATTORNEYS FOR RESPONDENT

RESPONDENT'S MOTION TO
DISMISS APPEAL

Columbia, South Carolina
September 29, 2016

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Trojan Labor/Hire Quest, Employer,Respondent.

PROOF OF SERVICE

I hereby certify that I served the Respondent's Motion to Dismiss Appeal upon all parties, by placing a copy in the United States mail, postage prepaid, to all parties on September 29, 2016, addressed to the following:

PARTY SERVED:

Terry McCall
340 Broad River Road
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Columbia, SC 29210

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ATTORNEYS FOR RESPONDENT

PROOF OF SERVICE-RESPONDENT'S
MOTION TO DISMISS APPEAL



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September 29, 2016

VIA UNITED STATES MAIL

The Honorable Jenny A. Kitchings
South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

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SC Court of Appeals

Re: McCall v. Trojan Labor/Hire Quest, LLC
Appellate Case No. 2016-001457
C&L File No. 001840-00804

Dear Ms. Kitchings:

Please find enclosed the original and seven (7) copies of Respondent Trojan Labor/Hire Quest, LLC's Motion to Dismiss Appeal in connection with the above referenced matter. Also enclosed is our firm's check in the amount of \$25.00, representing the filing fee of same. Please file the original and return a clocked copy to us using the enclosed envelope.

By copy of this letter and enclosure to Mr. McCall, we are serving same on him.

Sincerely,

A handwritten signature in black ink that reads 'Kelsey Brudvig'. The signature is written in a cursive style with a large, looping 'y' at the end.

Kelsey J. Brudvig

KJB/mmm
Enclosures
cc: Terry McCall

Haster

FIRST CLASS MAIL

09/29/2016

USPS POSTAGE

\$03.25⁰



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The Honorable Jenny A. Kitchings
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